

# Impact of gig economy on employment status



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## Introduction

The impact of the gig economy on employment relations is an issue being debated worldwide. The million-dollar question is whether workers are employees or self-employed.

Brazil's legal provisions protect employees, but impose a heavy burden on employers.

A common decisive criterion to distinguish an employee from a self-employed worker is the employer's exercise of authority in the relationship. The most important employment requirement for such test is subordination: does the worker have autonomy?

## Conflicting rulings on Uber

Some of the regional labour courts have held that Uber drivers are employees because the following facts show that Uber's drivers were in a position of subordination:

- Uber analysed customers' ratings, which could result in drivers' removal from the app;
- Uber provided personal accident insurance; and
- Uber enforced engagement rules, including penalising drivers who declined a certain number of rides.

However, in 2020 the Superior Labour Court held that Uber drivers were not in an employment relationship with Uber because they were given flexibility which was incompatible with subordination, and therefore incompatible with an employment relationship. In its ruling, the court highlighted Uber drivers' flexibility in determining:

- their routine;
- their working hours;
- the places in which they wished to work; and
- the number of clients that they intended to serve per day.

Although the Brazilian labour courts have provided no consolidated understanding to date, it is fair to say that the superior courts have tended to rule in favour of the companies, confirming the self-employment standpoint.

## Gig workers' lack of protection and benefits

It is clear that gig workers lack the protection and benefits applicable to employees. Gig workers' continuity of work, which affects their income, is decided by the applicable platform. Moreover, some platforms charge high fee percentages, which result in many hours of work, usually exceeding the working hours limits applicable to employees.

## Comment

Some commentators have argued that gig workers need specific laws regulating their work to address these issues and that, in this context, the Labour Code may not be the appropriate legal protection mechanism, since there is still much controversy regarding the classification of such workers as employees.

The advances and changes introduced by the gig economy are expected to help to modernise labour legislation and the judiciary's understanding of these new types of service and occupation.

However, legal certainty is needed on the issue. The regional labour courts render differing decisions and different interpretations of the law, which is unsafe and unpredictable for businesses, workers and society. There is a clear legislative gap which could affect cases with a high financial and social impact if the judiciary applies outdated legislation to these new forms of economic relationship.

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