

# Should Minimum Labor Standards Be Conditioned on Employment Relationship?: The DOLE Labor Advisory No. 14, Series of 2021, on Working Conditions of Delivery Riders and Courier Activities

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## I. INTRODUCTION

Following a series of delivery riders’ protests over allegedly arbitrary off-boarding and dismissals,<sup>1</sup> the Department of Labor and Employment (DOLE)

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issued Labor Advisory No. 14, Series of 2021 (Labor Advisory No. 14-21),<sup>2</sup> on 23 July 2021. It states —

IV. WORKING CONDITIONS. — All delivery riders who are deemed employees are entitled to the following minimum benefits, as provided for in the Labor Code, as renumbered, and other labor laws, as may be applicable:

- (a) Minimum wage;
- (b) Holiday pay;
- (c) Premium pay;
- (d) Overtime pay;
- (e) Night shift differential;
- (f) Service incentive leave;
- (g) Thirteenth-month pay;
- (h) Separation pay;
- (i) Retirement pay;
- (j) Occupational safety and health standards;
- (k) Social Benefits, e.g., SSS, PhilHealth, Pag-IBIG; and
- (l) Other benefits under existing laws.

All delivery riders who are deemed employees shall also enjoy the right to security of tenure, self-organization, and collective bargaining.<sup>3</sup>

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IMPUNITY: A REVIEW OF THE THREE MONITORING MECHANISMS (2019), and was a researcher-writer of the Public Sector International Research Study: Towards A Public Sector Labour Relations Law in the Philippines.

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1. The Manila Times, *DOLE Takes Action on Foodpanda Scandal*, MANILA TIMES, July 22, 2021, available at <https://www.manilatimes.net/2021/07/22/opinion/editorial/dole-takes-action-on-foodpanda-scandal/1807924> (last accessed Apr. 30, 2022) [<https://perma.cc/99EN-NVMU>].
2. Department of Labor and Employment, Working Conditions of Delivery Riders in Food Delivery and Courier Activities, Labor Advisory No. 14, Series of 2021 [DOLE Labor Advisory No. 14, s. 2021] (July 23, 2021).
3. *Id.* pt. IV.

Labor Advisory No. 14-21, in Part III, referred to the two-tiered test<sup>4</sup> or the multi-factor test of “control”<sup>5</sup> and “economic reality”<sup>6</sup> in determining the existence of an employer–employee relationship between the delivery riders and the digital platform company<sup>7</sup> or online location-based platforms.<sup>8</sup>

The power of control in the “four-fold test”<sup>9</sup> is the standard in determining the existence of an employer–employee relationship.<sup>10</sup> Of late, the “economic reality test”<sup>11</sup> gained significance in application alongside

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4. *See* *San Francisco v. National Labor Relations Commission*, G.R. No. 170087, 500 SCRA 690, 697–98 (2006).
  5. DOLE Labor Advisory No. 14, s. 2021, pt. III (citing *Albert B. Del Rosario, et al. v. ABS-CBN Broadcasting Corporation*, G.R. No. 202481, Sept. 8, 2020, at 21–22, available at <https://sc.judiciary.gov.ph/16566> (last accessed Apr. 30, 2022) (citing *South East International Rattan, Inc. v. Coming*, G.R. No. 186621, 718 SCRA 658, 666 (2014))).
  6. DOLE Labor Advisory No. 14, s. 2021, pt. III (citing *Del Rosario*, G.R. No. 202481, at 17 (J. Leonen, concurring opinion)).
  7. DOLE Labor Advisory No. 14, s. 2021, pt. II (b). “[R]efers to any person or entity who owns, manages[,] and/or operates a location-based digital platform which allocates work to individuals in a specific geographical area in food delivery and courier activities[.]” *Id.*
  8. *See generally* INTERNATIONAL LABOUR ORGANIZATION, WORLD EMPLOYMENT AND SOCIAL OUTLOOK: THE ROLE OF DIGITAL LABOR PLATFORMS IN TRANSFORMING THE WORLD OF WORK 18 (2021).

Digital [labor] platforms can be classified into two broad categories: online web-based and location-based platforms. On online web-based platforms, tasks or work assignments are performed online or remotely by workers. These tasks may include carrying out translation, legal, financial[,] and patent services, design and software development on freelance and contest-based platforms; solving complex programming or data analytics problems within a designated time on competitive programming platforms; or completing short-term tasks, such as annotating images, moderating content, or transcribing a video on microtask platforms. The tasks on location-based platforms are carried out in person in specified physical locations by workers, and include taxi, delivery and home services (such as a plumber or electrician), domestic work[,] and care provision.

*Id.* (emphases omitted).

9. DOLE Labor Advisory No. 14, s. 2021, pt. III (citing *Del Rosario*, G.R. No. 202481, at 21–22).
10. *Id.*
11. *Investment Planning Corp. of the Phil. v. Social Security System*, G.R. No. L-19124, 21 SCRA 924, 929–30 (1967) (citing *Bartels v. Birmingham*, 332 U.S. 126,

“right-of-control” following the rapid rise of Non-Standard Forms of Employment (NSFE),<sup>12</sup> which include the relationship of the delivery riders and couriers with online location-based platforms.

The two-tiered test, according to the Supreme Court speaking through then Justice Consuelo M. Ynares-Santiago in *Francisco v. National Labor Relations Commission*,<sup>13</sup> provides a framework of analysis, which would “take into consideration the totality of circumstances surrounding the true nature of the relationship between the parties.”<sup>14</sup>

The “economic reality test”<sup>15</sup> depends on the circumstances of the whole economic activity, such as:

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130 (1947)). In this case, the Supreme Court *en banc* had the opportunity to discuss the “economic reality test” in determining whether registered agents of a domestic corporation engaged in the sale of securities are exempt from the compulsory coverage of the Social Security Act by quoting the U.S. Supreme Court decision in *Bartels v. Birmingham*, which states —

Obviously control is characteristically associated with the employer-employee relationship, but, in the application of social legislation, employees are those who, as a matter of economic reality, are dependent upon the business to which they render service. In *Silk*, [the court] pointed out that permanency of the relation, the skill required, the investment i[n] the facilities for work and opportunities for profit or loss from the activities, were also factors that should enter into judicial determination as to the coverage of the Social Security Act. It is the total situation that controls.

*Bartels*, 332 U.S. at 130 (citing *United States v. Silk*, 331 U.S. 704, 716 (1947)).

12. See generally International Labour Organization, Non-Standard Forms of Employment, available at <https://www.ilo.org/global/topics/non-standard-employment/lang--en/index.htm> (last accessed Apr. 30, 2022) [<https://perma.cc/287L-KVZT>]. “Non-standard forms of employment’ — also referred to as diverse forms of work — is an umbrella term for different employment arrangements that deviate from standard employment. They include temporary employment; part-time and on-call work; temporary agency work and other multiparty employment relationships; as well as disguised employment and dependent self-employment.” *Id.*
13. *Francisco v. National Labor Relations Commission*, G.R. No. 170087, 500 SCRA 690 (2006).
14. *Id.* at 698.
15. DOLE Labor Advisory No. 14, s. 2021, pt. III (citing *Del Rosario*, G.R. No. 202481, at 17 (J. Leonen, concurring opinion)).

- (1) the extent to which the services performed are an integral part of the employers business;
- (2) the extent of the worker's investment in equipment and facilities;
- (3) the nature and degree of control exercised by the employer;
- (4) the worker's opportunity for profit and loss;
- (5) the amount of initiative, skill, judgment[,] or foresight required for the success of the claimed independent enterprise;
- (6) the permanency and duration of the relationship between the worker and the employer; and
- (7) the degree of dependency of the worker upon the employer for his continued employment in that line of business.<sup>16</sup>

However, the two-tiered test, along with the “independent contractor test,”<sup>17</sup> does not address the implications of confining minimum labor standards,<sup>18</sup>

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16. *Francisco*, 500 SCRA at 698-99 (citing *Brock v. Lauritzen*, 624 F.Supp. 966 (E.D. Wis. 1985) (U.S.), *aff'd*, *Sec'y of Lab. v. Lauritzen*, 835 F.2d 1529 (7th Cir. 1987) (U.S.); *Real v. Driscoll Strawberry Associates, Inc.*, 603 F.2d 748 (9th Cir. 1979) (U.S.); *Goldberg v. Whitaker House Cooperative, Inc.*, 366 U.S. 28 (1961); & *Bartels*, 332 U.S. 126).

17. DOLE Labor Advisory No. 14, s. 2021, pt. III (citing *Fuji Television, Inc. v. Espiritu*, G.R. Nos. 204944-45, 744 SCRA 31, 73 (2014)) & Department of Labor and Employment, *Delivery Riders Protected by Labor Law, Contract — DOLE*, available at <https://www.dole.gov.ph/news/delivery-riders-protected-by-labor-law-contract-dole> (last accessed Apr. 30, 2022) [<https://perma.cc/V4GK-E5HV>]. Jurisprudence has recognized that those with “unique skills and talents” and those who “lack of control over the means and methods in the performance of their work” are considered independent contractors. *Fuji Television Network, Inc.*, 744 SCRA at 76.

18. Minimum labor standards include hours of work, overtime pay, guaranteed minimum wage, holiday pay, night shift differential, 13th month pay, leave benefits, retirement pay, and separation pay, among others. See *Maternity Children's Hospital v. Secretary of Labor*, G.R. No. 78909, 174 SCRA 632, 638 (citing Department of Labor and Employment, *Rules on the Disposition of Labor Standards Cases in the Regional Office*, rule I, § 7 (Sept. 16, 1987)).

occupational safety and health (OSH),<sup>19</sup> and social protection<sup>20</sup> on the existence of an employer-employee relationship. Even if new tests are adopted or if the courts will declare the existence of employer-employee relationships, such as in the cases of the United Kingdom (U.K.),<sup>21</sup> Spain,<sup>22</sup> and San Francisco, California,<sup>23</sup> why would standards and protection be limited within the sphere of the employer-employee relationship? The employment relationship that we know has been redefined by digital technology and the emergence of different employment arrangements.

## II. MISSED OPPORTUNITY

The 2020<sup>24</sup> and 2021<sup>25</sup> protests of delivery riders could have been the impetus for review, but gauging from the Labor Advisory, the preference is to be boxed in by the age-old two-tiered test and independent contractor test<sup>26</sup> to rationalize who gets to be covered or not from those engaged to work by digital platform companies.

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19. See A Decree Instituting a Labor Code Thereby Revising and Consolidating Labor and Social Laws to Afford Protection to Labor, Promote Employment and Human Resources Development and Insure Industrial Peace Based on Social Justice [LABOR CODE], Presidential Decree No. 442, bk. iv, ch. 2, arts. 168-71 (2015) (as amended) & An Act Strengthening Compliance with Occupational Safety and Health Standards and Providing Penalties for Violations Thereof, Republic Act No. 11058, ch. 3, § 4 (2018).
  20. See *Tecson v. Social Security System*, G.R. No. L-15798, 3 SCRA 735, 738 (1961).
  21. INTERNATIONAL LABOUR CONFERENCE, THE EMPLOYMENT RELATIONSHIP, ¶¶ 86 & 90 (2005) (citing An Act to Consolidate Enactments Relating to Employment Rights [Employment Rights Act 1996], § 230 (1) & (4) (U.K.)).
  22. INTERNATIONAL LABOUR CONFERENCE, *supra* note 21, ¶ 89 (citing Royal Legislative Decree 1/1995, of March 24, Which Approves the Consolidated Text of the Workers' Statute Law [Royal Decree No. 1/1995], Royal Legislative Decree 1/1995, tit. 1, ch. 1, § 1, art. 1 (2) (Spain) (repealed in 2003)).
  23. See California Business & Professions Code [CAL. BUS. & PROF. CODE], ch. 10.5 (2020) (U.S.).
  24. Jamil Santos & Ted Cordero, *Foodpanda Riders Protest Alleged Unfair Labor Practices in Front of DOLE Office*, GMA NEWS, Nov. 18, 2020, available at <https://www.gmanetwork.com/ncaa/news/metro/764627/foodpanda-riders-protest-alleged-unfair-labor-practices-in-front-of-dole-office/story> (last accessed Apr. 30, 2022) [<https://perma.cc/8A66-W9F9>].
  25. The Manila Times, *supra* note 1.
  26. DOLE Labor Advisory No. 14, s. 2021, pt. III.

Thus, Part IV of the Labor Advisory further provides —

The terms and conditions of engagement of delivery riders who are deemed independent contractors or freelancers shall be governed by their respective contract or agreement with the digital platform company, which stipulate for the following provisions, including but not limited to:

- (a) Payment of fair and equitable compensation which shall not be lower than the prevailing minimum wage rate;
- (b) Facilitation of registration and coverage under the SSS, PhilHealth[,] and Pag-IBIG;
- (c) Compliance with applicable occupational safety and health standards[,] such as but not limited to[,] the use of standard protective helmet and personal protective equipment (PPEs), and attendance to regular training[ ] and seminars on road and traffic rules and road safety to be arranged by digital platform company in coordination with relevant government agencies; and
- (d) Arrangement with [the] concerned local government unit and/or merchants or groups of merchants in setting up designated waiting areas for delivery riders.

The contract or agreement herein referred to shall be knowingly and voluntarily agreed upon by the parties without any force, duress,[] improper pressure[,] or any other circumstances vitiating consent.<sup>27</sup>

Being a mere advisory with no obligatory force<sup>28</sup> as compared to a department order,<sup>29</sup> this issuance is not worth a bucket of warm spit according to labor groups.<sup>30</sup>

27. *Id.* pt. IV.

28. The Court stated that advisory opinions “veritably bind[ ] no one[.]” See JOAQUIN G. BERNAS, S.J., *THE 1987 CONSTITUTION OF THE PHILIPPINES: A COMMENTARY* 951 (2009) (citing *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain*, G.R. Nos. 183591, 183752, 183893, 183951, & 183962, 568 SCRA 402, 665-66 (2008) (citing JOAQUIN G. BERNAS, S.J., *THE 1987 CONSTITUTION OF THE PHILIPPINES: A COMMENTARY* 832-35 (1996))).

29. See *Valerio v. Secretary of Agriculture and National Resources*, G.R. No. L-18587, 7 SCRA 719, 723-24 (1963).

30. Aika Rey, *Riders’ Group Slams ‘Useless’ DOLE Advisory on Delivery Work*, RAPPLER, July 29, 2021, available at <https://www.rappler.com/business/riders-group-statement-dole-advisory-delivery-work> (last accessed Apr. 30, 2022) [<https://perma.cc/X2GK-9NR9>].

Adapting aspects, if not all, of existing minimum labor standards, OSH protection, and social protection, regardless of engagement or employment classification, is one viable option. It was not pursued, thereby missing the opportunity to address labor issues in the digital platform through productive social dialogue with the online location-based platforms' stakeholders.<sup>31</sup>

To recall, in 2020, the delivery riders raised unfair labor practices with respect to their payment scheme before the DOLE in Intramuros,<sup>32</sup> while in 2021, a 10-year suspension was imposed on 30 or more riders in Davao for planning to stay offline over issues on rider's fees.<sup>33</sup> The Davao incident was followed by the Cebu dismissal of 100 food delivery riders due to alleged fraud for availing themselves of a promotion, which is a serious violation of the company's code of conduct.<sup>34</sup> There are possibly more issues on the plight of delivery riders but have not been given attention, primarily because the use of the digital platform work arrangement results in their situation being under the radar.

In essence, the platform presents itself as an online marketplace or an intermediary online platform where the delivery riders or couriers, vendors, and customers converge and conduct their business transactions.<sup>35</sup> The platform brings them all together by way of a freelance agreement with the riders or couriers, and separately, a vendor's agreement with the vendors, regulating their access, setting the rules of engagement, and determining through algorithm who is allowed to participate or gets blocked in the marketplace.<sup>36</sup> Digital platform companies earn commission from the

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31. *See id.*

32. *See, e.g., Santos & Cordero, supra note 24.*

33. The Manila Times, *supra note 1*.

34. Dale G. Israel, *Drivers Seek Cebu City Gov't Help After Being Banned by Grab PH*, PHIL. DAILY INQ., Aug. 26, 2021, available at <https://newsinfo.inquirer.net/1479325/drivers-seek-cebu-city-govt-help-after-being-banned-by-grab-ph> (last accessed Apr. 30, 2022) [<https://perma.cc/4987-N4QU>].

35. Carsten Hirschberg, et al., *The Changing Market for Food Delivery*, available at <https://www.mckinsey.com/industries/technology-media-and-telecommunications/our-insights/the-changing-market-for-food-delivery> (last accessed Apr. 30, 2022) [<https://perma.cc/S7VZ-29PD>].

36. *See generally* Julia Tomassetti, *Digital Platform Work as Interactive Service Work*, 22 EM. RTS. & EMP. POL'Y J. 1, 6 (2018).



participating vendors, whereas the riders or couriers receive a service fee for every completed transaction.<sup>37</sup>

The online marketplace concept is similar, to a certain extent, to the usual brand or product consignment or space for display rental arrangement inside a department store or supermarket.<sup>38</sup> The difference in the department store or supermarket set-up are the following:

- (1) vending or sale is not done online, it is physical;
- (2) the contract is between the vendor/consignor and the department store or supermarket; and
- (3) the promo-merchandisers or salesclerks are provided or assigned to the consignor by an engaged labor service provider or contractor regulated by DOLE Department Order No. 174, Series of 2017 (DOLE D.O. No. 174, s. 2017),<sup>39</sup> issued on 16 March 2017.

Random informal interviews of delivery riders and drivers in Northern Mindanao revealed a lack of awareness of the existence of the Labor Advisory or labor protection and an uncertainty on their payment scheme and income stream.<sup>40</sup> But the delivery riders are quick to point out the autonomy and flexibility in their work — they can choose a work arrangement of either one or three five-hour shifts, or take just three four-hour shifts in a day, or not report to work at all. Also, they shared their average take-home pay is relatively high, about ₱500.00 a day for one shift, as compared to working for eight hours or beyond for a ₱365.00 daily minimum wage. There are incentive schemes offered by digital labor platforms, wherein the incentive structure of the riders will be based on how often they are on the road.<sup>41</sup> They can earn

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37. See Richa Noriega, *Netizens Dismayed by Delivery Service Price Surge During Holiday Season*, GMA NEWS, Dec. 28, 2021, available at <https://www.gmanetwork.com/news/money/companies/816256/netizens-dismayed-by-delivery-service-price-surge-during-holiday-season/story> (last accessed Apr. 30, 2022) [<https://perma.cc/AMV3-DGRM>].

38. See generally Tomassetti, *supra* note 36, at 7-8.

39. See Department of Labor and Employment, Rules Implementing Articles 106 to 109 of the Labor Code, as Amended, Department Order No. 174, Series of 2017 [DOLE D.O. No. 174, s. 2017] (Mar. 16, 2017).

40. Personal interviews with delivery riders and riders were conducted by the Author from December 2021 to January 2022.

41. See, e.g., Foodpanda, Fee Structure, available at <https://pandariders.sg/updates/fee-structure> (last accessed Apr. 30, 2022) [<https://perma.cc/4ZPH-SLEG>].

more if they are in batch one or the top riders group<sup>42</sup> of the six-batch category, with batch five being inactive and batch six for new riders. They claimed to get a monthly average of about ₱30,000.00.

They, however, have to pay out-of-pocket for their monthly Social Security System (SSS) contributions as self-employed individuals,<sup>43</sup> their insulated food or delivery box and uniform worth ₱3,000.00, and use their own vehicles and gasoline.<sup>44</sup> They are purportedly provided insurance, if they opt to have one through the digital platform company, after completing a minimum number of deliveries to cover the premium installments. Health insurance with minimum accidental death and disability coverage and accidental medical coverage for the duration of the freelance agreement is a requirement.<sup>45</sup> Becoming a delivery rider is easy — they just have to click “I Accept” after reading the digital contract online.<sup>46</sup>

In the Philippine Senate, during the consultations on the proposed Freelancers Protection Act or Senate Bill No. 1810,<sup>47</sup> principally authored by Senator Emmanuel Joel J. Villanueva to “provide a regulatory framework that guarantees full protection to all workers in new forms of work arrangement, such as freelance work, whether in-person[, ]through online platforms[,] or gig economy, which has grown exponentially with technological developments, weakening labor rights[,] and changing concepts of work and

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42. See, e.g., Foodpanda, Rider Batch, available at <https://pandariders.sg/uncategorized/rider-batch> (last accessed Apr. 30, 2022) [<https://perma.cc/WD7Y-WHV7>] & Lalamove, Lalastars Incentive, available at <https://www.lalamove.com/en-sg/more-benefit/lalastar-incentive> (last accessed Apr. 30, 2022) [<https://perma.cc/W7KL-CR34>].

43. See Social Security System, Rules and Regulations Implementing the Social Security Act of 2018, Republic Act No. 11199, rule 33 (2019).

44. See Clara Rosales, Foodpanda Riders in Manila to Get Free Bikes and Safety Gear, available at <https://www.reportr.world/news/foodpanda-riders-in-manila-to-get-free-bikes-a4373-20210610> (last accessed Apr. 30, 2022) [<https://perma.cc/942V-3ZJU>] & Institute of Labor Studies — DOLE, Video, FACEBOOK, June 29, 2021: 9:31 a.m., available at <https://www.facebook.com/ilsdoleofficial/videos/561918774972528> (last accessed Apr. 30, 2022) [<https://perma.cc/TJQ8-XKfV>].

45. As provided in Section 6 of a platform Freelance Agreement as of January 2021. Freelance Agreement (on file with Author).

46. *Id.*

47. An Act Providing Protection to Freelancers and for Other Purposes, S.B. No. 1810, 18th Cong., 2d Reg. Sess. (2020).

employer-employee relationship[.]”<sup>48</sup> it was strikingly disturbing that a provision for compliance with minimum labor standards was understood by freelancers in online web-based platforms to mean lowering their pay to the minimum level instead of a prohibition not to be crossed below the limit — a minimum, and not a cap.

Perhaps the lack of adequate information or understanding of labor protection or labor laws by both online web-based platforms, location-based platforms, or digital platform company freelancers or workers could have been addressed by the DOLE through engagement with them as they have been invisible, much like the workers in the informal economy. In fact, there is yet to be established a definite number as to how many are engaged in the gig economy in the Philippines and disaggregated into online web-based platforms and location-based platforms.<sup>49</sup> They are very similar to the workers in the informal economy<sup>50</sup> that remain fully unaccounted and unprotected, whether they are in the urban areas engaged in street vending or providing services, or the itinerant workers or manual laborers in the rural sectors like fishing, agriculture, or mining.<sup>51</sup>

### III. GIG IS WORK

“Gig”<sup>52</sup> is work, regardless of how short the service, task, or engagement is, or in spite of the inherent flexibility, autonomy, or freedom of choice to engage with one or multiple gigs. Neither its temporariness nor the fact that

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48. *Id.* § 2. See also S. JOURNAL NO. 8, at 323-24, 18th Cong., 2d. Reg. Sess. (Sept. 8, 2020).

49. See S. JOURNAL NO. 8, at 325-26.

50. International Labour Organization, *Resolution Concerning Decent Work and the Informal Economy*, ¶ 3, ILC Doc. No. GB.285/7/2 (June 19, 2002).

51. See International Labour Organization, *Informal Economy in the Philippines*, available at <https://www.ilo.org/manila/areasofwork/informal-economy/lang-en/index.htm> (last accessed Apr. 30, 2022) [<https://perma.cc/L87Z-TJFZ>].

52. Department of Labor and Employment — National Wages and Productivity Commission, *Pay Standards & Practices: Gig Economy*, at 1, available at <https://nwpc.dole.gov.ph/publications/gig-economy> (last accessed Apr. 30, 2022) [<https://perma.cc/RYE2-TDAX>]. “Gig,” in the context of gig economy, “[i]nvolves work done in digital labor platforms which includes both web-based platforms, where work is outsourced through an open call to a geographically dispersed crowd (‘crowd work’), and through location-based apps (‘work-on-demand via apps’) which allocate work to individuals in a specific geographic area.” *Id.*

the work is obtained, mobilized, or tapped through a digital platform or application should lead to an understanding that it is not work.<sup>53</sup>

It should be noted that work refers to an “activity in which one exerts strength or faculties to do or perform something” or “a specific task, duty, function, or assignment often being a part or phase of some larger activity[.]”<sup>54</sup> Clearly, a gig is work. How it is obtained or offered, or if it is done with flexibility or autonomy or through freelancing will not alter the fact that it is work.<sup>55</sup> Neither can the different engagement schemes, such as contracting or independent contracting, alter the fact that the activity is work and is performed by a worker, as defined in the Labor Code of the Philippines, as any member of the labor force, whether employed or unemployed.<sup>56</sup>

Without the need for legislation, a worker should clearly be the object of labor protective policies, and the work or undertaking should be subject to minimum labor standards and OSH regardless of how it is done. The mandate of protection to labor or workers under the 1987 Constitution<sup>57</sup> and the Labor Code of the Philippines,<sup>58</sup> consistent with the social justice principle,<sup>59</sup> is sufficient basis for such a broader out-of-the-box and inclusive policy thrust.

The following are the relevant provisions of the 1987 Philippine Constitution and the Labor Code of the Philippines, as renumbered —

The 1987 Constitution	The Labor Code
Art. II, Sec. 18. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare. <sup>60</sup>	Art. 3. <i>Declaration of Basic Policy.</i> — The State shall afford full protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race[,] or creed, and regulate the relations between workers and employers. The State

53. *Id.*

54. Merriam-Webster Dictionary, Definition of Work, available at <https://www.merriam-webster.com/dictionary/work> (last accessed Apr. 30, 2022) [<https://perma.cc/Z7FB-5U7S>].

55. Department of Labor and Employment — National Wages and Productivity Commission, *supra* note 52.

56. LABOR CODE, art. 13 (a) (as amended).

57. PHIL. CONST. art. II, § 18 & art. XIII, § 3.

58. LABOR CODE, arts. 3, 4, & 6 (as amended).

59. PHIL. CONST. art. XIII, § 3.

60. PHIL. CONST. art. II, § 18.

<p>Art. XIII, Sec. 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.</p> <p>It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.</p> <p>The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.</p> <p>The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.<sup>62</sup></p>	<p>shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work.<sup>61</sup></p> <p>Art. 4. <i>Construction in Favor of Labor.</i> — All doubts in the implementation and interpretation of the provisions of this Code, including its implementing rules and regulations, shall be resolved in favor of labor.<sup>63</sup></p> <p>Art. 6. <i>Applicability.</i> — All rights and benefits granted to workers under this Code shall, except as may otherwise be provided herein, apply alike to all workers, whether agricultural or non-agricultural.<sup>64</sup></p>
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Labor regulations should require as inherent in work minimum labor standards, workers' social protection coverage, OSH standards, and the

62. PHIL. CONST. art. XIII, § 3.

61. LABOR CODE, art. 3 (as amended).

63. *Id.* art. 4 (as amended).

64. *Id.* art. 6 (as amended).

fundamental principles and rights at work<sup>65</sup> (subject to variations in implementation, if necessary) without the need to hurdle the two-tiered test or independent contractor test.

Confining coverage or entitlement to work that is done within the traditional master-slave concept of an employer-employee relationship, as it is now, would only further fuel an increase in NSFE<sup>66</sup> or further the informalization of work arrangements evading labor regulations and protection.

Some economists perceive labor regulations and protection as rigid, which would not facilitate employment as a consequence.<sup>67</sup> They are viewed as added business cost; hence, the reluctance for straightforward coverage.<sup>68</sup> That regulations are “[c]ostly” or “threaten[ ] the gig economy or the country’s economy” are common reactions by platform businesses as shown in the U.K.

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65. INTERNATIONAL LABOUR ORGANIZATION, ILO DECLARATION ON FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK AND ITS FOLLOW-UP 7, ¶ 2 (2d ed. 2010).

Declares that all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote[,] and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely:

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory [labor];
- (c) the effective abolition of child [labor]; and
- (d) the elimination of discrimination in respect of employment and occupation.

*Id.*

66. International Labour Organization, *supra* note 12.

67. See Jean François Mayer, *The Limits of Labor Legislation Reforms: Rigidity, Growth, and Employment in Brazil (1995–2010)*, 8 J. POL. LAT. AM. 95, 99 (2016) (citing INTER-AMERICAN DEVELOPMENT BANK, INTER-AMERICAN DEVELOPMENT BANK ANNUAL REPORT 1998 139–40 (1999) & James Heckman & Carmen Pages, *The Cost of Job Security Regulation: Evidence from Latin American Labor Markets*, at 5, available at <https://publications.iadb.org/publications/english/document/The-Cost-of-Job-Security-Regulation-Evidence-from-Latin-American-Labor-Markets.pdf> (last accessed Apr. 30, 2022) [<https://perma.cc/R3C7-SLMT>]).

68. See *id.*

Supreme Court's 2021 ruling,<sup>69</sup> which declared Uber drivers as workers and not independent contractors.<sup>70</sup> Other examples are the Spanish regulation issued in 2021 requiring the hiring of workers on freelance arrangements,<sup>71</sup> and the Uber, et al.'s fight for Proposition 22 in San Francisco, California.<sup>72</sup>

But it should not be overlooked that it *could* become an added cost if it is unpredictable, not uniformly applied, or not inherent in the work performed. The cost of litigation and the usual misapplication or subjective application of the two-tiered test and the independent contractor test, as shown in a catena of decided cases, are the biggest contributor to its costliness.

Imposing regulations and labor protection, and in the same breath, providing an escape route from it, is not a good policy. Confining labor protection and minimum labor standards within the sphere of an outworn traditional employer-employee relationship poses a serious challenge to the

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69. Uber BV and others v. Aslam and others, No. 19022021, 2021 UKSC 5, ¶¶ 76-77 (2021) (U.K.).

70. See *id.* ¶¶ 1, 48, & 119. In this case, Uber BV argued that it does not owe its drivers national minimum wage, paid annual leave, and other workers' rights because it is merely an agent for its drivers who are independent contractors, not workers of Uber BV. The U.K. Supreme Court ruled to the contrary, finding no sufficient evidence for the assertion that Uber BV is merely an agent, and not the employer, of its drivers. Hence, Uber BV is an employer, and its drivers are its workers. *Id.*

71. Royal Decree-Law 9/2021, of May 11, Which Modifies the Revised Text of the Workers' Statute Law, Approved by Royal Legislative Decree 2/2015, of October 23, to Guarantee Labor Rights of People Dedicated to Delivery in the Field of Digital Platforms [Royal Decree-Law 9/2021], Royal Decree-Law 9/2021 (2021) (Spain).

72. See Shane A. Le Master & Robert T. Dumbacher, *Alameda Superior Court Judge Rules Proposition 22 Unconstitutional*, 11 NAT'L L. REV. (2021) (citing Protect App-Based Drivers and Services Act, CAL. BUS. & PROF. CODE, § 7448 (2020) (U.S.) & Castellanos, et al. v. State of California, et al., Case No. RG21088725 (Cal. Super. Ct. 2021) (U.S.)). Proposition 22, also known as the Protect App-Based Drivers and Services Act, was passed by ballot initiative and inserted into the California Business and Protections Code. However, the provision was subsequently declared unconstitutional by the Alameda County Superior Court. *Id.*

application or relevance of the social justice principle<sup>73</sup> and the outdated Labor Code of the Philippines.<sup>74</sup>

It is undeniable that gig work, particularly in digital platform companies, has grown by leaps and bounds, as one can see it in the community and in the entire country since the peak of the pandemic in 2020.<sup>75</sup> It is adding other forms of NSFE to the realm outside of labor regulations as well as to the trail of insecure and unprotected workers from the arbitrariness of the work arrangements.

#### IV. FREELANCE AGREEMENT IS A CONTRACT OF ADHESION

The freelance agreement of an existing digital platform company in the country shows that it is actually a contract of adhesion.<sup>76</sup> It is “a ready-made form of contract, which the other party may accept or reject, but which the latter cannot modify.”<sup>77</sup> The contractor or freelance worker will merely click “I Accept” to the platform prepared stipulations and he/she does not get to keep a copy of the contract.<sup>78</sup>

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73. *Calalang v. Williams, et al.*, 70 Phil. 726, 734-35 (1940). The decision states —

Social justice is ‘neither communism, nor despotism, nor atomism, nor anarchy,’ but the humanization of laws and the equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated. Social justice means the promotion of the welfare of all the people, the adoption by the Government of measures calculated to insure economic stability of all the competent elements of society, through the maintenance of a proper economic and social equilibrium in the interrelations of the members of the community, constitutionally, through the adoption of measures legally justifiable, or extra-constitutionally, through the exercise of powers underlying the existence of all governments on the time-honored principle of *salus populi est suprema lex*.

*Id.*

74. LABOR CODE.

75. Smile, Philippines’ Gig, Internet Economies Grew the ‘Fastest’ Driven by Pandemic Restrictions, *available at* <https://www.getsmileapi.com/philippines-gig-internet-economies-grew-the-fastest-driven-by-pandemic-restrictions> (last accessed Apr. 30, 2022) [<https://perma.cc/9NEL-VGA5>].

76. *Norton Resources and Development Corporation v. All Asia Bank Corporation*, G.R. No. 162523, 605 SCRA 370, 380-81 (2009).

77. *Id.*

78. Freelance Agreement, *supra* note 45.



The agreement imposes on the freelancer or contractor duties and responsibilities, such as to deliver food and beverage and other goods from the vendors to the customers within an allocated time frame with a high level of service; be subjected to certain criminal background and driving record checks from time to time in order to qualify to provide and remain eligible to provide delivery services; and his/her access to the platform may be withdrawn from time to time if he/she fails to meet the requirements set for in the agreement and other applicable laws and regulations.<sup>79</sup> The platform also has the right and sole discretion to change the service fees or to change the performance scoring or rating mechanism at any time, and shall just notify the contractor of such changes, but his/her continued use of the platform shall be construed as acceptance of the changes made summarily.<sup>80</sup>

Additionally, the platform company “may terminate the agreement at any time for any reason by issuing a written notice to the [c]ontractor and subsequently[,] restricting or withdrawing access to the ... [p]latform.”<sup>81</sup> The contractor may also terminate the agreement at any time by informing the platform and by not applying for shifts through the platform.<sup>82</sup> Amendments and modifications of the agreement are reserved to the platform company, and it can assign all its rights and obligations under the agreement to any third party without the necessity of obtaining the prior consent of the contractor, who has no equivalent right to transfer his/her rights and obligations to any other party.<sup>83</sup>

Juxtaposed with the U.K. Supreme Court’s unanimous decision in February 2021, the freelance arrangement of Philippine delivery riders and couriers is not far behind. The U.K. Supreme Court ruled that Uber drivers are entitled to benefits such as paid holidays, minimum wage, and pensions<sup>84</sup> as a high level of control is evident based on the following:

- (1) Uber dictates how much drivers are paid for the work they do;<sup>85</sup>
- (2) The contract terms on which drivers perform their services are imposed by Uber<sup>86</sup> and drivers have no say in them, once a driver

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79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. *Uber BV and others*, 2021 UKSC ¶¶ 35 & 93.

85. *Id.* ¶ 94.

86. *Id.* ¶ 95.

has logged onto the Uber app, the driver's choice about whether to accept requests for rides is constrained by Uber;<sup>87</sup>

- (3) Monitoring the driver's rate of acceptance (and cancellation) of trip requests and imposing what amounts to a penalty if too many trip requests are declined or cancelled by automatically logging the driver off the Uber app for 10 minutes, thereby preventing the driver from working until allowed to log back on;<sup>88</sup>
- (4) Uber exercises significant control over the way in which drivers deliver their services;<sup>89</sup> and
- (5) A significant factor is that Uber restricts communications between passenger and driver to the minimum necessary to perform the particular trip and takes active steps to prevent drivers from establishing any relationship with a passenger capable of extending beyond an individual ride.<sup>90</sup>

The State of California's Proposition 22, which is currently under appeal after it was declared unconstitutional by Alameda County Superior Court Judge Frank Roesch on 20 August 2021,<sup>91</sup> considers app-based drivers to be independent contractors and not employees or agents.<sup>92</sup> It seeks to override the 2019 Assembly Bill 5,<sup>93</sup> which established a three-factor test to decide a worker's status as an independent contractor.<sup>94</sup> The three-factor test requires that

- (a) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact[;]

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87. *Id.* ¶ 96.

88. *Id.* ¶ 97.

89. *Id.* ¶ 98.

90. *Uber BV and others*, 2021 UKSC ¶ 100.

91. Le Master & Dumbacher, *supra* note 72.

92. CAL. BUS. & PROF. CODE, § 7448.

93. An Act to Amend Section 3351 of, and to Add Section 2750.3 to, the Labor Code, and to Amend Sections 606.5 and 621 of the Unemployment Insurance Code, Relating to Employment, and Making an Appropriation Therefor, Assembly Bill No. 5, California Legislature, 2019-20 Reg. Sess. (2019) (U.S.).

94. *Id.* § 2.

- (b) The person performs work that is outside the usual course of the hiring entity's business[; and]
- (c) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.<sup>95</sup>

V. FAR-REACHING IMPLICATIONS OF LABOR ADVISORY NO. 14-21:  
LEGITIMIZING ENDO AND THE PROHIBITED LABOR-ONLY  
CONTRACTING (LOC)

If Labor Advisory No. 14-21 remains to be the State's labor policy on delivery riders and courier service, the same will have far-reaching implications. In the Author's view, this engenders a transition to the acceptability of end-of-contract (ENDO)<sup>96</sup> work arrangements if done in digital labor platforms.

It is possible that contractors or subcontractors will be *encouraged* to convert into a labor service digital platform or gig work to avoid a regularization of the status directive from DOLE or from the court.<sup>97</sup> It frees them from the shackles of regulations and litigations while still being able to collect a service fee from the customers or employers.<sup>98</sup> It can also transform into a platform private employment agency. ENDO workers will just be required to provide their own tools or equipment in performing the work, tasks, or service; providing flexibility to choose their workload, work schedules, and freedom to report to work or not; provided with general guidelines instead of control;

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95. CAL. BUS. & PROF. CODE, § 2750.3 (a) (1) (A)-(C).

96. Department of Labor and Employment — Bureau of Labor Relations, DOLE Meets Employers in Key Industries to Stop “Endo”, *available at* <https://blr.dole.gov.ph/2016/08/08/dole-meets-employers-in-key-industries-to-stop-endo> (last accessed Apr. 30, 2022) [<https://perma.cc/6FKW-VV6L>]. The article provides —

According to DOLE, ‘endo’ practices or the use of short-term employment contracts whether in bilateral and/or trilateral employment relationships that is contrary to the provisions of Articles 106 to 109 of the Labor Code, as amended, or are in circumvention of Articles 294 to 296 of the same Code, is prohibited.

*Id.*

97. *See, e.g.*, Congressional Policy and Budget Research Department, Contractualization Act, *available at* [https://cpbrd.congress.gov.ph/cpbrd.congress.gov.ph/index.php?option=com\\_content&view=article&layout=edit&id=789](https://cpbrd.congress.gov.ph/cpbrd.congress.gov.ph/index.php?option=com_content&view=article&layout=edit&id=789) (last accessed Apr. 30, 2022) [<https://perma.cc/2UD9-WLRJ>] (emphasis supplied).

98. *Id.*

and to a certain extent, their work, task, or service is fragmented. Conversion can also be resorted to by establishments by having a labor service digital platform directly offering microwork or tasks, or freelance work. Thus, ENDO, including the counterpart in the public sector known as the more than 600,000 job orders and contract of service workers either supplied by subcontractors or directly hired,<sup>99</sup> will be beyond the lens of labor regulations and protection.

Another possible casualty is the prohibition against labor-only contracting in Article 106 of the Labor Code of the Philippines,<sup>100</sup> as implemented under Section 5 of DOLE D.O. No. 174, s. 2017,<sup>101</sup> issued on 16 March 2017. The prohibition will be mooted by conversion to a digital platform or freelance work arrangement.

With a large number of unprotected workers in the gig economy, on one side, and few protected workers with employer-employee relationship, on the other, if the policy remains as it is, in the long run, it will result in labor market segmentation or labor market dualism.<sup>102</sup>

But the gravest implication of boxing in the applicability of minimum labor standards and labor protection within the two-tiered test and independent contractor test is the eventual commodification of work or “humans-as-a-service”<sup>103</sup> and this will further the weakening of labor rights. Market-driven take-home pay is one indication of commodification, all in the name of flexibility and autonomy to carry out the work, task, or service.

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99. CNN Philippines Staff, *Hiring of Gov't Contractual Workers to Be Allowed Until Dec. 2022*, CNN PHIL., Oct. 16, 2020, available at <https://www.cnnphilippines.com/news/2020/10/16/hiring-government-contractual-workers-allowed-until-Dec.-2022.html> (last accessed Apr. 30, 2022) [<https://perma.cc/9RSE-YHVV>].

100. LABOR CODE, art. 106 (as amended).

101. *See generally* DOLE D.O. No. 174, s. 2017.

102. *See* The World Bank, Report Highlights for Labor Market Review Report, available at <https://www.worldbank.org/en/country/philippines/publication/report-highlights-for-labor-market-review-report> (last accessed Apr. 30, 2022) [<https://perma.cc/74PF-Y65F>].

103. VALERIO DE STEFANO, *THE RISE OF THE JUST-IN-TIME WORKFORCE: ON-DEMAND WORK, CROWDWORK, AND LABOR PROTECTION IN THE GIG-ECONOMY* 4 (2016).

VI. LABOR LAWS AND LABOR PROTECTION SHOULD COVER ALL  
WORKERS WITHOUT CONDITION

Senate Bill No. 1810 of Senator Villanueva, under Senate Committee Report No. 109,<sup>104</sup> dated 7 September 2020, aims to break the exclusionary application of labor laws and labor protection.<sup>105</sup> The State’s mantle of protection should not only be available to workers within the sphere of an employer-employee relationship.<sup>106</sup> Taking note that digital technology applications have redefined the concept of work and traditional employment relationship and have further weakened labor rights,<sup>107</sup> Senate Bill No. 1810 extends the protective mantle of labor laws to gig economy workers or freelancers.<sup>108</sup>

Under Senate Bill No. 1810, “all freelancers, regardless of the profession, talent, skills, task, work[,] or service required or to be rendered[,]”<sup>109</sup> “whether he or she is paid by results, piece, task, hour, day, job[,] or by the nature of the services required”<sup>110</sup> are accorded all the rights of workers guaranteed under the 1987 Philippine Constitution, the applicable provisions of the Labor Code of the Philippines, as amended, and relevant international human rights instruments and international labor standards.<sup>111</sup>

Under the bill, freelancers have the

- (a) [r]ight to a written contract or agreement;<sup>112</sup>
- (b) [r]ight to just compensation ... ;<sup>113</sup>
- (c) [r]ight to safe and healthy working conditions;<sup>114</sup>

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104. Re: Senate Bill No. 1810, Recommending Its Approval in Substitution of Senate Bill Nos. 155 and 644, S. Comm. Rep. No. 109, 18th Cong., 2d Reg. Sess. (2020).

105. See S.B. No. 1810, § 2.

106. *Id.*

107. S. JOURNAL NO. 8, at 323–27.

108. S.B. No. 1810, § 2.

109. *Id.* § 3.

110. *Id.* § 4 (c).

111. *Id.* § 5.

112. *Id.* § 6 (a).

113. *Id.* § 6 (b).

114. S.B. No. 1810, § 6 (c).

- (d) [r]ight to self-organization and to collectively negotiate with the government, the client, and other entities for the promotion of their welfare and in the advancement of their rights and interests;<sup>115</sup>
- (e) [r]ight to be free from any form of discrimination, violence, sexual harassment, and abuse;<sup>116</sup>
- (f) [r]ight to representation and participation in policy and decision-making processes ... ;<sup>117</sup>
- (g) [r]ight to access their own data, information[,] and resources[;]<sup>118</sup>
- (h) [r]ight to affordable and adequate financial services ... ;<sup>119</sup>
- (i) [r]ight to education and skills training;<sup>120</sup>
- (j) [r]ight to social protection and social welfare benefits;<sup>121</sup> and
- (k) [r]ight to speedy redress of grievances[.]<sup>122</sup>

The bill mandates DOLE to “ensure [c]ompliance with the written contract between the freelancer and the client[;]”<sup>123</sup> set up a “DOLE registry of freelancers [or their association] and provide them with labor market interventions and assistance;”<sup>124</sup> ensure the “[f]ree exercise of freelancers’ right to self-organization and to collectively negotiate with the government, the client, and other entities for the promotion of their welfare ..., and ... participation in policy and decision-making processes and social dialogue[s];”<sup>125</sup> and to “[e]nter[ ] into bilateral or multilateral agreements with countries where online web platforms are registered or located for the

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115. *Id.* § 6 (d).

116. *Id.* § 6 (e).

117. *Id.* § 6 (f).

118. *Id.* § 6 (g).

119. *Id.* § 6 (h).

120. S.B. No. 1810, § 6 (i).

121. *Id.* § 6 (j).

122. *Id.* § 6 (k).

123. *Id.* § 7 (a).

124. *Id.* § 7 (b).

125. *Id.* § 7 (c).

protection and enforcement of Philippine freelancers' rights[.]" among others.<sup>126</sup>

The passage of Senate Bill No. 1810 or the proposed "Freelancers Protection Act" into law is a step to correct any policy implications of the application or non-application of DOLE Labor Advisory No. 14-21. Nonetheless, it requires more.

#### VII. THE NEED FOR A PRODUCTIVE INDUSTRY TRIPARTITE SOCIAL DIALOGUE

As early as 2015, the International Labour Organization (ILO) has already started the conversation on the benefits and potential effects of the gig economy on workers' rights, labor regulations, social protection, and employment.<sup>127</sup>

In Southeast Asia, Grab hosted conversations with the ILO in 2021.<sup>128</sup> The conversation recognized that gig workers "often face income precarity due to the transient and uncertain nature of work opportunities[.]"<sup>129</sup> and "tend not to be covered by certain legal protections accorded to formal sector workers, and hence lack access to benefits typically provided to employees, such as insurance, sick-leave[,], and pension plans[.]"<sup>130</sup> Thus, "[g]overnments have a unique and delicate role to play to bring the various stakeholder groups together [through social dialogue] to leverage the benefits of the gig economy while addressing its challenges" to promote fair governance of the gig economy.<sup>131</sup>

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126.S.B. No. 1810, § 7 (e).

127.International Labour Organization, Digital Labour Platforms, *available at* <https://www.ilo.org/global/topics/non-standard-employment/crowd-work/lang--en/index.htm> (last accessed Apr. 30, 2022) [<https://perma.cc/SA3H-DVTZ>].

128.Grab, The Gig Economy in Southeast Asia: Grab Conversation Held in Collaboration with the ILO, *available at* <https://www.grab.com/sg/blog/public-policy/the-gig-economy-in-southeast-asia-grab-conversation-ilo> (last accessed Apr. 30, 2022) [<https://perma.cc/X84X-ACRE>].

129.*Id.*

130.*Id.*

131.*Id.*

In the country, the DOLE may have had mini dialogues with some of the platform stakeholders in relation to the issues raised to it.<sup>132</sup> But with the changing concepts of work and employer–employee relationship and the weakening of labor rights in its wake, the creation of a nationwide Industry Tripartite Council (ITC)<sup>133</sup> for the gig economy is imperative. It should be recalled that ITC creation has always been the anticipatory approach to handhold new industry as it evolves and grows, and a venue for productive tripartite social dialogues with the stakeholders with a view of crafting fair industry labor regulations.<sup>134</sup>

Fair labor regulations are no longer drafted from scratch. Neither would the same require a big debate on jurisprudence or legislation such as in the U.K., Spain, and the United States.<sup>135</sup> The study on platform work conducted by the Institute for Labor Studies (ILS), the research arm of the DOLE, has recommended to establish new initiatives and undertakings in governing the industry’s activities in recognition of the fact that the food and service delivery platform industry has led to a new type of work.<sup>136</sup>

The ILS study outlines in its Research Brief, the following recommendations derived from key research findings:

(1) Employment Facilitation: *Employability of Workers Enhanced*

*Reinforce Referral and Placement Services.* Food and service delivery workers may be included in DOLE’s Public Employment Services (PES). The survey results showed that many respondents have technical–vocational certificates

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132. See, e.g., Germalina Lacorte & Roy Stephen C. Canivel, *DOLE Calls Foodpanda, Riders to Dialogue*, PHIL. DAILY INQ., July 20, 2021, available at <https://newsinfo.inquirer.net/1461735/dole-calls-foodpanda-riders-to-dialogue> (last accessed Apr. 30, 2022) [<https://perma.cc/K2QH-RDSY>].

133. See The Philippine Open Government Partnership, 5th National Action Plan Revised 2019–2022, at 79–80, available at [https://www.opengovpartnership.org/wp-content/uploads/2019/12/Philippines\\_Action-Plan\\_2019-2022\\_Revised.pdf](https://www.opengovpartnership.org/wp-content/uploads/2019/12/Philippines_Action-Plan_2019-2022_Revised.pdf) (last accessed Apr. 30, 2022) [<https://perma.cc/P47R-BZS2>].

134. *Id.*

135. See generally INTERNATIONAL LABOUR CONFERENCE, *supra* note 21.

136. Raymond R. Estrella, et al., Platform Work and COVID-19: A Descriptive Analysis on Nature and Work Conditions of Food and Service Delivery Workers, at 4, available at <https://www.ils.dole.gov.ph/downloads/file/704-platform-work-and-covid-19-a-descriptive-analysis-on-nature-and-work-conditions-of-food-and-service-delivery-workers> (last accessed Apr. 30, 2022) [<https://perma.cc/RJ8A-AUF3>].



and undergraduate (college) degrees; hence, they secure other long-term and stable employment opportunities in the future.

*Craft Industry-Responsive and Standardized Training and Development Resources.* Training and Development modules may be developed and standardized for platform workers[,] considering their working conditions and specific needs, including the business model of these platforms. Creating a special Technical Working Group (TWG) from DOLE will help define the nature of work, applicable standards, and terms of employment in the platform industry.

(2) Employment Preservation and Regulation: *Protection of Workers' Rights and Maintenance of Industrial Peace Ensured*

*Develop a "Model Contract" for Platform Workers.* A 'model contract' may be formulated across all platforms to help new and aspiring freelancers ensure that their terms of employment are fair and decent across the board. This model may serve as a fair practice since all platform owners consider their food and service delivery riders 'independent contractors,' riders are only expected to agree with its terms and conditions to start working.

*Intensify Dispute Resolution.* The resolution of disputes in the food and platform industry may be best addressed through alternative dispute resolution methods such as conciliation and mediation. This strategy is vital in the kind of work-setting in this industry, and the Bureau of Labor Relations (BLR) of the DOLE may further assist in its implementation.

(3) Workers Protection and Welfare: *Social Protection for Vulnerable Workers Strengthened*

*Enforce Mandatory Basic Social Protection.* The access of platform workers to mandatory basic social insurance programs, including personal accident insurance, could be achieved by pursuing innovations and exploring mechanisms in which platform owners will contribute to the social security premiums of platform workers. The portability of their social security benefits should also be considered, especially when workers shift to another platform provider.

*Boost the Role of the Government.* The business IT infrastructure of every platform should be inspected by the government (i.e., DICT, DOST, and the like). Such intervention is not only to regulate the said infrastructure but also for the government to provide the necessary support through programs or services to further improve the digital ecosystem in the food and service delivery platform industry. Further, 'fake' or fraudulent bookings can be best addressed by establishing 'special desks' exclusively for riders or customers in police stations or other offices that involve them in the maintenance of peace

and security (i.e., NBI, Barangay) under the police power of the State. This initiative could be institutionalized by legislation.<sup>137</sup>

The above recommendations can enable a fair labor regulation that balances the interest of all stakeholders in the platform. It need not be costly on the part of the gig firms, but at the same, it need not be at the expense of labor rights and standards.

The crafting of fair labor regulations is urgent.<sup>138</sup> It has to be done now while we are not yet at the stage where the gaps in the prevailing policy are seen as an incentive to avoid compliance with minimum labor standards, OSH standards, social protection, and the fundamental principles and rights at work.

The undertaking will also open an opportunity to look into the situation of those engaged in online web-based platforms, described as involved in

tasks or work ... performed online or remotely by workers[, such as online] translation, [teaching, ]legal [transcription,] financial and patent services, design and software development on freelance and contest-based platforms; solving complex programming or data analytics problems within a designated time on competitive programming platforms; or completing short-term tasks, such as annotating images, moderating content, or transcribing a video on microtask platforms.<sup>139</sup>

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137. *Id.* at 4-5.

138. See MB Technews, 'Online Filipino Workers' and the Growth of the PH Digital Gig Economy, MANILA BULL., July 19, 2021, available at <https://mb.com.ph/2021/07/19/online-filipino-workers-and-the-growth-of-the-ph-digital-gig-economy> (last accessed Apr. 30, 2022) [<https://perma.cc/43MJ-K933>].

139. INTERNATIONAL LABOUR ORGANIZATION, *supra* note 8, at 18.