GIG ECONOMY: HOW TO OVERCOME THE PROBLEM OF MISCLASSIFYING GIG WORKERS AS SELF-EMPLOYED? *

Aneta TYC**

Abstract: *The aim of this theoretical paper is to build a proposal which can help to overcome the problem that online platforms misclassify their workers as independent contractors, thus depriving them of traditional employment benefits. The article uses insights mainly from labour and employment law literature to develop the concept that the current default presumption – that the gig worker is an independent contractor – should be changed. It supports the argument that the rebuttable presumption in favour of an employment relationship should be established when dealing with workers who carry out work through Internet platforms but in a real (not virtual) world. Judges in common law countries could take as starting points the 'dependency' test and the 'right to control' test while judges in civil law countries could primarily rely on the 'concept of subordination'. The indicia mentioned in the ILO's Employment Relationship Recommendation, 2006 (no. 198) could be helpful in determining the gig worker's status. The legal qualification of a relationship as one of employment or self-employment can be conducted by using the typological method consisting in recognising and identifying which features – those typical/specific for employment relationship or for self-employment – prevail (prevailing features/dominant features). Finally, the author comments on a long-awaited proposal for a directive of the European Parliament and of the Council on improving working conditions in platform work (of 9 December 2021), according to which, under certain circumstances all platform workers would be considered employees.*

Keywords: *gig economy; gig worker; online platform; employee; independent contractor.*

DOI 10.53373/ REDS.2022.56.3.0072

Do gig workers fall within the traditional binary employee-classification system?

The defining feature of the business operating in the gig economy is that it offers online apps to connect individuals needing services with those providing services, but does not consider itself to be a service provider[1]. Consequently, the majority of

* The project was financed by the National Science Centre in Poland pursuant to the decision number DEC- 2018/29/B/HS5/02534. The project's registration number is: 2018/29/B/HS5/02534.

** Assistant Professor, Department of European, International and Collective Labour Law, Faculty of Law and Administration, University of Lodz.

[1] Tran M and Sokas RK (2017) The Gig Economy and Contingent Work: An Occupational Health Assessment. *Journal of Occupational & Environmental Medicine* 59(4): e63–e66. DOI: 10.1097/JOM.0000000000000977, p. e63; Crank AL (2016) O'Connor v. Uber Technologies, Inc.: The Dispute Lingers—Are Workers in the On-Demand Economy Employees or Independent Contractors? *American Journal of Trial Advocacy* 39(3): 609-634, p. 610; Rogers B (2016) Employment Rights in the Platform Economy: Getting Back to Basics. *Harvard Law & Policy Review* 10(2): 479-520, p. 480.

platforms classify workers as 'self-employed' or 'independent contractors'. They thereby avoid employers' commitments resulting from labour law. However, the assumption upon which the platform is only an intermediary between individuals seeking services with those providing services is not so obvious. For example, according to the opinion of Advocate General Maciej Szpunar delivered on 11 May 2017 (case C-434/15 Asociación Profesional Elite Taxi v Uber Systems Spain SL, request for a preliminary ruling from the Juzgado de lo Mercantil No 3 de Barcelona): 'Uber is (...) not a mere intermediary between drivers willing to offer transport services occasionally and passengers in search of such services. On the contrary, Uber is a genuine organiser and operator of urban transport services in the cities where it has a presence'. In fact, there are already many examples of judgments according to which Uber is the employing entity and its drivers should not be classified as self-employed persons (Employment Tribunal in Aslam and Farrar and others v Uber BV, Uber London Ltd and Uber Britannia Ltd (2202550/2015) of 2016, October).

Given 'low barriers of entry', one could think that courts could easily solve the problem of misclassification. Then, the legislation – with 'higher barriers of entry' – would not be necessary. However, it should be mentioned that Dubal[2] discerns limitations of misclassification litigation court victories related to the effectuation and the enforcement of gig workers' rights. Besides, the problem that occurs in connextion with courts is that they have no option but to fit workers into existing categories, e.g., employee, self-employed[3]. Do gig workers fall comfortably within the framework of these categories?

From a common law perspective the 'dependency' test and the 'right to control' test can provide some help when determining who should be considered an 'employee'. The economic dependency test is rooted in the need to offset the power of the employer when there is a lack of any sufficient counter-balance, and the fact that workers are dependent on the income from their labour to survive[4]. Basically, 'dependency' test means that when a worker is de facto and consistently economically dependent upon a single client or business (alleged employer), he/she should be perceived as an employee. The economic aspects of the dependence between worker and employer play here a greater role than the formal and legal ones[5]. On the other hand, in the light of the 'right to control' test the greater the degree of control exercised by the employer, the more likely we will deal with the

[2] Dubal VB (2017b) Winning the Battle, Losing the War: Assessing the Impact of Misclassification Litigation on Workers in the Gig Economy. *Wisconsin Law Review*: 739-802, *passim.*

[3] Collier RB, Dubal VB and Carter C (2017) *Labor Platforms and Gig Work: The Failure to Regulate*. IRLE Working Paper No. 106-17. Available at: http://irle.berkeley.edu/files/2017/Labor-Platforms-and-Gig-Work.pdf, p. 23.

[4] Engels C (2014) Subordinate Employees or Self-Employed Workers? In: Blanpain R (ed) *Comparative Labour Law and Industrial Relations in Industrialized Market Economies*, Alphen aan den Rijn: Wolters Kluwer, pp. 372-373.

[5] Countouris N (2007) *The Changing Law of the Employment Relationship. Comparative Analyses in the European Context.* Aldershot: Ashgate Publishing, pp. 61-62; Davies ACL (2009) *Perspectives on Labour Law*. Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo, Delhi: Cambridge University Press, p. 90.

employment relationship[6]. Overall, in determining employee or independent contractor status, case law uses the 'multi-factor test' (multi-indicia test) which considers the totality of the relationship between the worker and the employer[7].

As regards the 'dependency' test in context of gig workers, they are not formally prohibited from performing work on diverse online platforms, however, digital businesses retain 'leverage to pressurise workers to work exclusively on their platform'[8], e.g. problems with the workers' right to data portability. When it comes to the 'right to control' test, platforms often not only exert control over how work is performed and compensated, but also monitor and supervise the actions of workers[9]. Reputational feedback mechanisms are used in order to control, e.g. the Uber drivers. The corporation uses the ratings to monitor their actions and to ensure that they comply with Uber policy. This is what creates 'subordination' in civil law countries. In fact, employers' control over employees is a crucial characteristic of the employment relationship, irrespective of the country or legal tradition we are referring to[10].

However, it should be noted that Stewart and Stanford[11] warn against generalising the results obtained from the analysis of Uber to other platforms since Uber is not very representative. The Uber's 'higher degree of managerial control over the hiring and firing, direction, supervision and payment of workers' is one of differences in relation to other platforms. On the other hand, a closer look taken at e.g. Foodora or Deliveroo leads to the ascertainment that they exert control by market mechanisms and through performance-based pay and bonuses, automated messaging, information asymmetries and internal competition for shifts[12].

Such a strong level of control could suggest that gig workers should not be classified as independent contractors. The classification, however, appears to be equivocal because of their considerable autonomy and flexibility over their work. Gig workers are free to choose hours of work and whether to sign up for certain tasks. That is why they do not entirely correspond with the traditional definition of

[6] Emir A (2016) *Selwyn's Law of Employment*. 19th ed. Oxford: Oxford University Press, pp. 44-45.

[7] Minter K (2017) Negotiating labour standards in the gig economy: Airtasker and Unions New South Wales. *The Economic and Labour Relations Review* 28(3): 438-454, p. 441; Riley J (2016) The Definition of the Contract of Employment and Its Differentiation from Other Contracts and Other Work Relations. In: Bogg A, Cabrelli D, Collins H, Countouris N, Davies ACL, Deakin S, Freedland M and Prassl J (eds) *The Contract of Employment*. Oxford: Oxford University Press, pp. 329-331; Emir A (2016) Selwyn's..., p. 48 et seq.

[8] Minter K (2017) Negotiating..., p. 439.

[9] *Ibidem.*

[10] De Stefano V (2018) "Negotiating the algorithm": Automation, artificial intelligence and labour protection. Employment Policy Department EMPLOYMENT Working Paper No. 246. Available at: http://www.labourlawresearch.net/sites/default/files/papers/Negotiating%20the%20algorithm%20De%20Stefano%20.pdf, p. 13.

[11] Stewart A and Stanford J (2017) Regulating work in the gig economy: What are the options? *The Economic and Labour Relations Review* 28(3): 420-437, p. 423.

[12] Ivanova M, Bronowicka J, Kocher E and Degner A (2018) *The App as a Boss? Control and Autonomy in Application-Based Management*. Working paper. Europa-Universität Viadrina. Available at: http://www.labourlawresearch.net/sites/default/files/papers/ArbeitGrenzeFlussVol02.pdf, pp. 4 and 18.

an employee, and are similar to independent contractors[13]. Does it mean that the binary employee-classification system is insufficient in the case of gig workers?

Not necessarily. However, different authors come to different conclusions. According to Prassl[14], the above-mentioned tests will often lead to the establishment of the employment status indeed because of tight control over workers. At the same time, in making the case for employment protection, he tackles 'the myth that employment rights and flexibility are inherently incompatible'. This problem has been also discussed by Spitko[15] from another point of view. Unlike Prassl, he argues that a platform's right to impose quality control standards on workers should not weigh in favor of the establishment of the employment relationship when the workers themselves directly benefit from the positive reputation and good will connected with the brand, which both help grow the worker's market.

The latter argument does not seem to be convincing. Workers' benefits from the imposition of quality control standards should not hinder the determination of the existence of an employment relationship (alongside that line of thought, researchers at universities could have problems to be classified as employees). Sharing Prassl's view, on the other hand, may bring us closer to our final goal, i.e. answering to the need of covering gig workers with labour and employment law protections, thus addressing their vulnerabilities.

The fact that gig workers do not necassarily remain outside an employment relationship is also confirmed by the 'European agenda for the collaborative economy'[16] (European Commission, 2016, pp. 12-13). Admittedly, in this document the European Commission makes reference to the definition of 'worker' in EU law, but the criteria discussed there are used by courts in the Member States 'when they undertake their global assessment of a given employment relationship in the national remit'. Taking into consideration cumulatively especially three indispensable criteria — the existence of a subordination link, the nature of work, and the presence of a remuneration — it is to be established whether an employment relationship exists or not. According to the agenda, many of the common arguments put forward by the platforms, such as that the work does not take place continuously, and that workers are not constantly monitored, are not sufficient to avoid qualification of platform work as a working relationship[17].

---

[13] Atmore EC (2017) Killing the Goose That Laid the Golden Egg: Outdated Employment Laws Are Destroying the Gig Economy. *Minnesota Law Review* 102(2): 887-922, p. 902-903; Minter K (2017) Negotiating..., p. 439.

[14] Prassl J (2018) *Humans as a Service: The Promise and Perils of Work in the Gig Economy*. Oxford: Oxford University Press, pp. 94, 100, 115.

[15] Spitko EG (2018) A Structural-Purposive Interpretation of "Employment" in the Platform Economy. *Florida Law Review* 70(2): 409-446, pp. 428 and 434.

[16] European Commission (2016) *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A European agenda for the collaborative economy.* Brussels: European Commission.

[17] Hernández Bejarano M (2016) El apoyo europeo al modelo de economía colaborativa: algunas cuestiones y propuestas para afrontar una regulación laboral y de seguridad social. *Nueva Revista Española de Derecho del Trabajo* 192: 165-186, pp. 173-174.

Weighing up regulatory proposals

The solution proposed by Prassl and Risak[18] does not focus on the search for the contract of employment, but rather on the question of 'who is in charge'. The authors have shifted focus from notions of the employee to the functional concept of the employer. Analysing main functions of the employer and their functional foundations[19], they have qualified, e.g. Uber as the employer who should be responsible for ensuring employment rights in each jurisdiction it operates[20]. However, the fragmentation of employer functions in many platforms (e.g. TaskRabbit) is a limitation of the concept. Where this is the case, according to the authors, multiple entities should be treated as employers for different purposes. This approach seems to be problematic and in many countries may encounter obstacles to be applied.

Another regulatory proposal amounts to introduction of a third category. The adoption of a 'dependent contractor' as a third employment classification has been proposed, e.g. by McCabe[21]. Harris and Krueger[22] have postulated the establishment of an 'independent worker' as a legal category somewhere between an 'employee' and 'independent contractor'. As the latter authors have pointed out, the legislative framework should give independent workers access to different forms of insurance, civil rights protections, employer-provided benefits, organising and collective bargaining, and tax withholding. But, due to the 'immeasurability' of working hours, they would not be able to claim a minimum wage, workers' compensation, or overtime payments. It seems, however, that technology is advanced to such a degree to cope with measuring workers' hours and assigning them to the employer. Thus, there is no reasonable ground to deprive workers of these benefits[23]. The second limitation of the whole concept lies in the fact that another pathway to misclassification would appear and would only add to the confusion[24]. Finally, it should be clearly stated that the intermediate category between employee and independent contractor is nothing new. Some foreign legal systems have already had experience with implementing a hybrid

[18] Prassl J and Risak M (2016) Uber, Taskrabbit, and Co.: Platforms as Employers? Rethinking the Legal Analysis of Crowdwork. *Comparative Labor Law & Policy Journal* 37(3): 619-651, p. 641 et seq.; Prassl J (2018) Humans..., p. 102 et seq.

[19] See also: Prassl J (2015) *The Concept of the Employer*. Oxford: Oxford University Press, p. 32 et seq.

[20] Prassl J and Risak M (2016) Uber..., pp. 636-641.

[21] McCabe EE (2016) Not Like the Others: Applying the Fair Labor Standards Act to the Sharing Economy. *Kansas Law Review* 65(1): 145-176, pp. 165-171.

[22] Harris S and Krueger A (2015) A Proposal for Modernizing Labor Laws for Twenty-First-Century Work: The "Independent Worker". Available at: https://www.brookings.edu/wp-content/uploads/2016/07/modernizing_labor_laws_for_twenty_first_century_work_policy_brief.pdf

[23] Healy J, Nicholson D and Pekarek A (2017) Should we take the gig economy seriously? *Labour & Industry: a journal of the social and economic relations of work* 27(3): 232-248, p. 235; Gahan P, Healy J and Nicholson D (2017) Technology, the Digital Economy and the Challenge for Labour Market Regulation. In: Howe J, Chapman A and Landau I (eds) *The Evolving Project of Labour Law. Foundations, Development and Future Research Directions*. Sydney: The Federation Press, pp. 276-291, p. 288. See the cited literature.

[24] Vandaele K (2018) *Will trade unions survive in the platform economy? Emerging patterns of platform workers' collective voice and representation in Europe*. Working Paper 2018.05. ETUI: Brussels, p. 9.

category. Cherry & Aloisi warn[25] that experimenting with a third category might be risky. Its adoption in Italy resulted in 'widespread arbitrage of the categories with businesses moving employees into a «bogus» discounted status in the quasi-subordinate category'. In Spain, the third category is applicable only to a small part of workers because of the fact that the requirements for joining the hybrid category were burdensome. Prassl[26] discerns problems in Germany and the UK as well.

In weighing up regulatory proposals, we can indicate one that could really become the starting point for formulating a broader concept. As raised by Cherry & Aloisi[27], and De Stefano[28], currently, if a corporation treats workers as independent contractors, it is left up to the workers to prove otherwise. According to these authors, the default presumption should be changed. The default classification would be an employment relationship on the assumption that a worker has worked a minimum threshold of hours. Interestingly, as showed by Stewart and Stanford, some judges in Australia already apply similar concept in practice.

We could draw upon the work of above-mentioned authors and try to develop it. Indeed, the 'presumption of employment relationship' in the case of gig workers who carry out work through an online platform but in a real world would mean that protective statutes and regulations already existing across countries could be applied. The platform (corporation) could bring an action before court to rebut the presumption and prove that the gig worker is self-employed.

The 'dependency' test and the 'right to control' test on the one hand, and the 'concept of subordination' on the other hand, could be starting points for judges in common law countries and civil law countries, respectively. The indicia mentioned in the Recommendation no. 198 (known as Employment Relationship Recommendation), concluded by the general conference of the ILO on 15 June 2006 could be helpful in determining the gig worker's status. The document itself is based on indicia existing in many different countries, not only in the common law system[29].

The legal qualification of a relationship as one of employment or self-employment can be conducted by using the typological method consisting in recognising and identifying which features – those typical/specific for employment relationship or for self-employment – prevail (prevailing features/dominant features). If there are more features characteristic for employment – the relationship would be generally classified as such. However, the judge should not only simply count the features, but also weigh them up. For example, the lack of carrying out work personally or the lack of subordination would exclude employment relationship

[25] Cherry MA and Aloisi A (2017) 'Dependent Contractors' in the Gig Economy: a Comparative Approach. *American University Law Review* 66(3): 635-689, pp. 637 and 688.
[26] Prassl J (2018) *Humans...*, p. 48.
[27] Cherry MA and Aloisi A (2017) 'Dependent..., p. 682-683; De Stefano V (2016b) The rise of the 'just-in-time workforce': On-demand work, crowdwork and labour protection in the 'gig-economy'. Geneva: International Labour Office, p. 22.
[28] Stewart A and Stanford J (2017) Regulating..., p. 426.
[29] Davidov G (2016) *A Purposive Approach to Labour Law*. Oxford: Oxford University Press, p. 128.

(the most important features). By contrast, using the worker's own equipment would not automatically mean self-employment (less important feature).

This approach, in fact, means that relevant local labour and employment laws could be applied (e.g., the minimum wages, social protection systems, freedom of association and the right to collective bargaining, health and safety regulations) and that the potential classification problems could be settled at court level. Other issues problematised in this article, e.g. the need to reduce the time of searching for work – could be easily addressed with the use of technology itself.

Proposal for a directive of the European Parliament and of the Council on improving working conditions in platform work

On December 9, 2021, a proposal for a directive of the European Parliament and of the Council on improving working conditions in platform work (COM(2021) 762 final) has been adopted. What is most satisfying is that the proposal to some extent mirrors the concept presented in this article (the presumption of employment relationship). According to the 'Reasons for and objectives of the proposal': 'Today, over 28 million people in the EU work through digital labour platforms. In 2025, their number is expected to have reached 43 million'. Moreover, '…up to five and a half million people working through digital labour platforms could be at risk of employment status misclassification. Those people are especially likely to experience poor working conditions and inadequate access to social protection'. It has been highlighted that 'As a result of the misclassification, they cannot enjoy the rights and protections to which they are entitled as workers. These rights include the right to a minimum wage, working time regulations, occupational safety and health protection, equal pay between men and women and the right to paid leave, as well as improved access to social protection against work accidents, unemployment, sickness and old age'. In light of the above, ensuring 'that people working through platforms have – or can obtain – the correct employment status in light of their actual relationship with the digital labour platform and gain access to the applicable labour and social protection rights' has been recognised as one of the specific objectives of the directive. As a consequence, 'between 1.72 million and 4.1 million people are expected to be reclassified as workers (circa 2.35 million on-location and 1.75 million online considering the higher estimation figures)'.

Given this context, let us have a closer look at the specific solutions of the proposal for a directive. The key point about the proposal has been included in Article 4 ('Legal presumption'), according to which:

'1.The contractual relationship between a digital labour platform that controls, within the meaning of paragraph 2, the performance of work and a person performing platform work through that platform shall be legally presumed to be an employment relationship. To that effect, Member States shall establish a framework of measures, in accordance with their national legal and judicial systems.

The legal presumption shall apply in all relevant administrative and legal proceedings. Competent authorities verifying compliance with or enforcing relevant legislation shall be able to rely on that presumption.

2.Controlling the performance of work within the meaning of paragraph 1 shall be understood as fulfilling at least two of the following:

(a)effectively determining, or setting upper limits for the level of remuneration;

(b)requiring the person performing platform work to respect specific binding rules with regard to appearance, conduct towards the recipient of the service or performance of the work;

(c)supervising the performance of work or verifying the quality of the results of the work including by electronic means;

(d)effectively restricting the freedom, including through sanctions, to organise one's work, in particular the discretion to choose one's working hours or periods of absence, to accept or to refuse tasks or to use subcontractors or substitutes;

(e)effectively restricting the possibility to build a client base or to perform work for any third party.'

Significantly, Article 5 of the proposal for a directive gives the possibility to rebut the legal presumption: 'Member States shall ensure the possibility for any of the parties to rebut the legal presumption referred to in Article 4 in legal or administrative proceedings or both'.

Conclusion

Gig workers – misclassified by online platforms as independent contractors and thus, not covered by traditional employment benefits – join the group of precarious workers. However, regardless of how they are called (e.g. taskers, rabbits), people working through online platforms under invisible oversight of the smartphone algorithm cannot be treated like 'face-less' machines. This study contributes to the literature by offering additional insights on how to protect them under labour and employment laws, and how to ensure them decent work.

The research shows that advantages of the gig economy could outweigh disadvantages if an adequate regulatory solution is proposed. The idea is to address the insecurity of gig workers, while maintaining their flexibility, at the same time. In fact, this is not true that 'employment rights and flexibility are inherently incompatible'.

Going further, the author answers the question whether gig workers fit in the employee/independent contractor classification system. It becomes clear that this is not excluded. Focusing on worldwide responses to the problem of the status of gig workers, and mentioning some of the ideas being now under debate, the author finally builds upon works of Cherry & Aloisi[30], and De Stefano[31]. The proposal refers to

[30] Cherry MA and Aloisi A (2017) 'Dependent..., p. 682-683.
[31] De Stefano V (2016b) The rise..., p. 22.

workers who carry out work through Internet platforms but in a real (not virtual) world. It develops the concept that the current default presumption (that the gig worker is an independent contractor) should be changed. It supports the argument that the rebuttable presumption in favour of an employment relationship should be established.

The problem that sometimes arises and stems from the uncertainty of the legal status of gig workers could be solved by judges in both common law countries (mainly by using the 'dependency' test and the 'right to control' test) and in civil law countries (primarily by using the 'concept of subordination'). The indicia mentioned in the ILO's Employment Relationship Recommendation, 2006 (no. 198) could be helpful in determining the gig worker's status. The findings in this article complement existing research by adding to the debate on understanding that the legal qualification of a relationship as one of employment or self-employment can be conducted by using the typological method consisting in recognising and identifying which features – those typical/specific for employment relationship or for self-employment – prevail (prevailing features/dominant features).

As a matter of fact, the proposal amounts to applying relevant local labour and employment laws to gig workers, e.g. the minimum wages, health insurance, disability insurance, unemployment insurance, overtime pay, freedom of association and the right to collective bargaining, anti-discrimination protections, health and safety regulations. All potential classification problems could be settled at court level: the corporation could always prove that, e.g. a genuinely independent contractor only wants to advertise his services through the platform.

Some of the problems mentioned in the article, e.g. the need to reduce the time of searching for work – could be addressed with the use of technology itself. In fact, technology can be used to ensure, e.g. that workers earn at least the minimum wage and that the unpaid period of waiting for work is covered by the remuneration.

Of course, it has been suggested by some authors that Internet platforms and gig workers pose a challenge to a traditional employer – employee model. As research shows, it does not have to be that way. Indeed, corporations like Instacart, Shyp, and Managed by Q have already tried to adopt this pattern[32]. Maybe the question should be: 'Are traditional models for regulating the employment relationship outmoded?'. Stone[33] replies in the affirmative and – at the same time – proposes new theories around flexible work arrangements.

The long-awaited proposal for a directive of the European Parliament and of the Council establishing the rebuttable legal presumption tries to solve the problems discussed in the article. It can surely be interpreted as a welcome move towards the improvement of working conditions in platform work. Tellingly, it largely reflects the concept proposed in this study.

[32] Tran M and Sokas RK (2017) The Gig..., p. e64.
[33] Stone KVW (2004) *From Widgets to Digits: Employment Regulation for the Changing Workplace*. Cambridge: Cambridge University Press.

Bibliography:

• Atmore EC (2017) Killing the Goose That Laid the Golden Egg: Outdated Employment Laws Are Destroying the Gig Economy. *Minnesota Law Review* 102(2): 887-922.
• Cherry MA and Aloisi A (2017) 'Dependent Contractors' in the Gig Economy: a Comparative Approach. *American University Law Review* 66(3): 635-689.
• Collier RB, Dubal VB and Carter C (2017) *Labor Platforms and Gig Work: The Failure to Regulate*. IRLE Working Paper No. 106-17. Available at: http://irle.berkeley.edu/files/2017/Labor-Platforms-and-Gig-Work.pdf
• Countouris N (2007) *The Changing Law of the Employment Relationship. Comparative Analyses in the European Context.* Aldershot: Ashgate Publishing.
• Crank AL (2016) O'Connor v. Uber Technologies, Inc.: The Dispute Lingers—Are Workers in the On-Demand Economy Employees or Independent Contractors? *American Journal of Trial Advocacy* 39(3): 609-634.
• Davidov G (2016) *A Purposive Approach to Labour Law*. Oxford: Oxford University Press.
• Davies ACL (2009) *Perspectives on Labour Law*. Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo, Delhi: Cambridge University Press.
• De Stefano V (2018) "Negotiating the algorithm": Automation, artificial intelligence and labour protection. Employment Policy Department EMPLOYMENT Working Paper No. 246. Available at: http://www.labourlawresearch.net/sites/default/files/papers/Negotiating%20the%20algorithm%20De%20Stefano%20.pdf
• De Stefano V (2016b) The rise of the 'just-in-time workforce': On-demand work, crowdwork and labour protection in the 'gig-economy'. Geneva: International Labour Office.
• Dubal VB (2017b) Winning the Battle, Losing the War: Assessing the Impact of Misclassification Litigation on Workers in the Gig Economy. *Wisconsin Law Review*: 739-802.
• Emir A (2016) *Selwyn's Law of Employment*. 19th ed. Oxford: Oxford University Press.
• Engels C (2014) Subordinate Employees or Self-Employed Workers? In: Blanpain R (ed) *Comparative Labour Law and Industrial Relations in Industrialized Market Economies*, Alphen aan den Rijn: Wolters Kluwer, pp. 361-384.
• European Commission (2016) *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A European agenda for the collaborative economy.* Brussels: European Commission.
• Gahan P, Healy J and Nicholson D (2017) Technology, the Digital Economy and the Challenge for Labour Market Regulation. In: Howe J, Chapman A and Landau I (eds) *The Evolving Project of Labour Law. Foundations, Development and Future Research Directions*. Sydney: The Federation Press, pp. 276-291.
• Harris S and Krueger A (2015) A Proposal for Modernizing Labor Laws for Twenty-First-Century Work: The "Independent Worker". Available at: https://www.brookings.edu/wp-content/uploads/2016/07/modernizing_labor_laws_for_twenty_first_century_work_policy_brief.pdf
• Healy J, Nicholson D and Pekarek A (2017) Should we take the gig economy seriously? *Labour & Industry: a journal of the social and economic relations of work* 27(3): 232-248.
• Hernández Bejarano M (2016) El apoyo europeo al modelo de economía colaborativa: algunas cuestiones y propuestas para afrontar una regulación laboral y de seguridad social. *Nueva Revista Española de Derecho del Trabajo* 192: 165-186.
• McCabe EE (2016) Not Like the Others: Applying the Fair Labor Standards Act to the Sharing Economy. *Kansas Law Review* 65(1): 145-176.
• Minter K (2017) Negotiating labour standards in the gig economy: Airtasker and Unions New South Wales. *The Economic and Labour Relations Review* 28(3): 438-454.

• Prassl J (2018) *Humans as a Service: The Promise and Perils of Work in the Gig Economy*. Oxford: Oxford University Press.
• Prassl J (2015) *The Concept of the Employer.* Oxford: Oxford University Press.
• Prassl J and Risak M (2016) Uber, Taskrabbit, and Co.: Platforms as Employers? Rethinking the Legal Analysis of Crowdwork. *Comparative Labor Law & Policy Journal* 37(3): 619-651.
• Riley J (2016) The Definition of the Contract of Employment and Its Differentiation from Other Contracts and Other Work Relations. In: Bogg A, Cabrelli D, Collins H, Countouris N, Davies ACL, Deakin S, Freedland M and Prassl J (eds) *The Contract of Employment*. Oxford: Oxford University Press, pp. 321-340.
• Rogers B (2016) Employment Rights in the Platform Economy: Getting Back to Basics. *Harvard Law & Policy Review* 10(2): 479-520.
• Spitko EG (2018) A Structural-Purposive Interpretation of "Employment" in the Platform Economy. *Florida Law Review* 70(2): 409-446.
• Stewart A and Stanford J (2017) Regulating work in the gig economy: What are the options? *The Economic and Labour Relations Review* 28(3): 420-437.
• Stone KVW (2004) *From Widgets to Digits: Employment Regulation for the Changing Workplace*. Cambridge: Cambridge University Press.
• Tran M and Sokas RK (2017) The Gig Economy and Contingent Work: An Occupational Health Assessment. *Journal of Occupational & Environmental Medicine* 59(4): e63–e66. DOI: 10.1097/JOM.0000000000000977.
• Vandaele K (2018) *Will trade unions survive in the platform economy? Emerging patterns of platform workers' collective voice and representation in Europe*. Working Paper 2018.05. ETUI: Brussels.