



DELIVERY RIDERS RECEIVE ADDITIONAL SAFEGUARDS AND MAY BE PRESUMED EMPLOYEES

Decree Law 101/2019, has recently been made full statute in amended form as Law 128/2019, introducing a number of new provisions regarding, among others, bicycle and scooter delivery riders and couriers who work in urban environments through the use of digital platforms.

Presumption of employment

The central development is that workers whose engagement is organised through digital platforms are presumed to be employees within the scope of article 2 of Legislative Decree 81/2015, which has been amended accordingly. The changes may make themselves felt beyond the work of delivery couriers.

The presumption of employment for which the legislation's current terms provide means that the law of employment applies to all labour engagements that take the form of work that are performed predominantly personally on an ongoing basis, where the way in which performance is carried out are organised by the principal.

Key issues

- Couriers presumed employed
- Written agreement required
- Compensation regulated
- Insurance against workplace accidents and occupational diseases mandatory

Other safeguards for delivery riders

With regard to delivery riders specifically, the law puts in place a number of safeguards, some of which go beyond those afforded by the general presumption. In particular:

- **Contract must be made in writing**

A delivery rider must be engaged under an agreement made in writing. The worker is entitled to damages should such an agreement be absent, and the amount of those damages would be determined equitably by the court based on the amounts received in the prior year.

- **Criteria for determining compensation to be established by collective bargaining agreements**

In the absence of a collective bargaining agreement on the specific issue, a delivery rider's compensation (i) cannot be based upon the number of deliveries

made; and (ii) must be determined in accordance with the minimums stated in the tables to the national collective bargaining agreements for sectors similar to those for the business concerned.

There is also a requirement that there be an overtime payment of not less than an additional 10 per cent., for work at night, on bank holidays, or during adverse weather conditions.

- **Insurance against workplace accidents and occupational diseases**

Delivery riders who operate through digital platforms and provide home deliveries – also those whose engagement is not considered employment – must be covered by mandatory insurance against workplace accidents and occupational diseases.

The reforms' relationship with recent caselaw

The legislation was passed following a number of lawsuits and court rulings that have regarded labour relationships within what is often referred to as the gig economy. The absence hitherto of any specific legislation in this law has attracted the media's attention to the cases, this is in part due to the data protection issues that had arisen.

The reforms appear likely to assure delivery riders greater legal safeguards than the caselaw previously provided. They may also give rise to subtle questions of interpretation that will not be easily resolved.

On the one hand, labour relationships within the gig economy are a mixed bag and cannot be generalised with forms of self-employment, alongside other examples that more closely resemble employment. On the other hand, the courts have recently been identifying employment relationships based on the fact that the dealings were largely conducted between human and machine. In particular, the Court of Padua's decision in its Judgment 550 of 16 July 2019 found that workers engaged in the collection and transport of goods in connection with a subcontract should be deemed employees of the principal, and not the subcontractor, in that the organisation of the work was fully automated, and the software that achieved that automatization was exclusively at the disposal of the principal.

It will therefore still be a matter for the courts and the caselaw as to what restrictions there will be upon work where delivery riders are not classified as employees.

CONTACTS:

Simonetta Candela
Partner

T +39 02 8063 4245
E simonetta.candela@cliffordchance.com

Marina Mobiglia
Senior Associate

T +39 02 8063 4339
E marina.mobiglia@cliffordchance.com