Definition of Employment Relationships in the New Economy: Legal Challenges and Proposals for Reform

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Abstract

The rapid development of the digital economy, particularly the rise of platform-based business models, has posed significant challenges to the traditional theoretical and legal frameworks for determining employment relationships. In emerging work arrangements such as ride-hailing drivers and food delivery couriers, the relationship between workers and platform companies defies conventional classification. It neither fully aligns with standard employment relationships nor neatly fits into the category of civil contractual relationships. This legal ambiguity has sparked ongoing scholarly debates about the definition and criteria for the identification of employment relationships in the new economy. Through a systematic review of extant literature, this article synthesizes the predominant theoretical perspectives, prevailing legal standards, and practical dilemmas in the classification of platform-based work relationships. Furthermore, it explores potential pathways for legal and institutional reforms to address these challenges and ultimately ensure that regulatory frameworks evolve in tandem with the realities of the digital labor market.

Keywords

New employment forms; Employment relationship; Platform economy; Algorithmic management.

1. Defining the New Economy Employment Relationships

1.1. Traditional Doctrinal Framework for Determining Employment Relations

The employment relationship is one of the core concepts in labor law, referring to the legal relationship between employees and employers based on labor contracts. Traditional theory holds that the employment relationship possesses the following key characteristics: First, the labour-capital relation, which means that employees are subject to the employers' direction, management, and supervision during the term of contracts. Second, the wage, indicating that employees rely on the salary paid by the employer to make living. Third, the quid pro quo of labor, whereby employees exchange labor for means of subsistence.[1] The essence of traditional theory lies in the subordinate nature between employees and employers. However, the manifestation of this subordination has undergone significant changes in the new economic era. It has challenged the applicability of the traditional framework for determining employment relationships.

1.2. Literature Review

The academic discourse on the characterization of employment relationships in the new economy has coalesced around three representative viewpoints. These three kind of literature

1.2.1. The Civil Contractual Relationship Theory

A segment of scholars have argued that employment relationships in the new economy should be grounded on the principle of contractual freedom. The principle has framed the relationship between platforms and employees as a civil contractual relationship. It further emphasizes that platforms primarily serve as intermediaries for information exchange while employees remain substantial autonomy. The subordination characteristic of employees in employment relationships according to labor law are thereby gradually weakended. For instance, Professor Xu Zengpeng contends that employees and platforms both have no mind to establishing an employment relationship between each other in the article Reflections on the Determination of Employment Relationships in Flash Delivery Platforms. Platforms, he furthermore argues, function as intermediaries. Employees just need accept orders, provide services by themselves for customers, whereas they are at full liberty to decide whether to engage in the business. The relationship is on these grounds classified as a civil contractual arrangement rather than a formal employment relationship.[2] From an economic perspective, this aligns with the "gig economy" labor market characteristics, where platform workers often exhibit high labor mobility and fragmented employment patterns. Data from Meituan's 2023 Report shows that 63% of food delivery couriers engage in multi-platform operations, reflecting a flexible labor supply-demand matching mechanism distinct from traditional employment contracts. This determination is derived from a nuanced analysis on subjective mutual intent and the autonomy versus dependence inherent in the role of employees.

1.2.2. The Modified Subordination Theory

A cohort of scholars advocates for a redefinition of the criterion of subordination theory. This point of view emphasizes that the algorithmic control or digitalized management of employees by platforms should be incorporated into the determination of employment relationships. Professor Yao Pengbin posits that technical subordination should be introduced as a benchmark which means synthesizing the operational logic and practical application of algorithms to identify algorithmic employees. He continues to argue that platforms exert a more covert form of control through algorithmic frameworks designed to transfer employment risks while algorithmic workers are relatively flexible in terms of working hours, locations, and supervision methods. It results in a phenomenon of "de-laborization" within algorithmic labor. The purpose of emphasizing technical subordination, he contends, is to require adjudicators faced with algorithmic worker classification disputes to adopt algorithmic thinking, perspectives, and logic and to expose the subordinate relationship between platforms and workers.[3] In essence, the intervention of algorithmic factors disrupts traditional criteria for the evaluation of employment relationships—particularly due to the opacity of algorithms and their tendency to obscure labor relations. It necessitates a focus on the algorithmic core to properly characterize such relationships.

Professors Ye Jiamin and Li Shaojun argue for reforming the categorical criteria of subordination into a factor-based analytical framework. The opinion aims to safeguard the rights of workers in the gig economy. Subordination and autonomy coexist in this economic model where the core elements of employment relationship determination are preserved. Drawing on comparative legal scholarship, legislative frameworks and judicial precedents, subordination which is an abstract measure of dependency between workers and employers should entail a holistic assessment that integrates multiple factual dimensions rather than a rigid, binary determination. Under this refined standard, qualified new economy workers could be flexibly included. Also, comprehensive protection can be ensured within the employment relationship framework.[4] This approach acknowledges that the traditional all-or-nothing test of subordination is ill-suited to the evolving dynamics of the new economy. Instead, it advocates for a multifactorial analysis attuned to the reality of contemporary work.

1.2.3. The Non-Standard Employment Relationship Theory

An alternative scholarly perspective posits that the traditional employment relationship framework has become increasingly untenable in the context of the internet-based gig economy. The tranformation creats a paradoxical scenario in which conventional labor classification criteria fail to capture emerging employment mode. To adequately protect the rights of new-economy workers, it is urgent to establish a novel regulatory paradigm. As Professor Wang Jian elucidates in the article Identity Determination and Labor Relationship Reconstruction for Platform Workers in APP-Based Employment that "non-standard employment relationships"—also termed irregular employment or disguised employment relationships—represent a distinct social construct, The construct obviously contrasts with traditional standard employment. Whereas conventional labor relations are characterized by fixed working hours and strong subordination of worker to employers, the digital economy has given rise to an array of non-standard work arrangements, including dispatched labor, temporary workers, and self-employed contractors, all of which meet enterprises' demand for workforce flexibility. The defined characteristics of such relationships can be conceptualized as "three disconnections and three integrations": first, the decoupling of employment relationships from physical workplaces, stable working arrangements, and direct labor deployment; second, their simultaneous convergence with business operations, service provision networks, and multiple overlapping employment affiliations. This structural duality fundamentally reconfigures the traditional employer-employee nexus and creats a hybrid model. In this model, the boundaries of the organization become fluid, while functional interdependencies continues to exist in new forms. In addition, the personal and economic subordination that is the hallmark of traditional employment are substantially diminished, while informational subordination, including workers' dependence on the platform as well as controlled data and algorithms, emerges as the dominant feature. It reflects the flexible nature of platform-mediated labor.[5] Given this shift, the orthodox employment framework no longer corresponds to contemporary work realities. It is necessary to develope a tailored regulatory regime for such hybrid work arrangements.

2. Limitations of Traditional Criteria for Employment Relationship

2.1. The Declining Relevance of Personal Subordination

The determination of traditional employment relationships has relied predominantly on the criterion of "personal subordination", which examines whether workers are subject to the employers' direct command, management, and supervision in the course of their work. While this standard continues to apply to long-term employment arrangements, it is severely limited in the context of the flexible work models prevalent in the new economy. As Chen Haiyan observes, platform workers are in fact subject to indirect control exercised by platform companies through algorithmic management even though platform workers have discretion over their work processes. This emerging form of control which is rooted in technology and data analysis operates through both conventional human supervision and sophisticated mechanisms. These oversight and mechanism, including task assignment, performance evaluation, and dynamic reward-penalty systems, allows for the precise regulation of worker behavior.[6] Professor Yang Ming further elaborates that digitized management lies in the opacity of algorithmic rules and the growing dependence of workers on platforms. Contemporary algorithms not only govern fundamental aspects of work such as task distribution and compensation structures, but also subtly influence behavior of workers through rating systems, dispatched privileges, and other hidden governance mechanisms. This represents a paradigm shift from traditional direct command to what may be termed as "algorithmic direction". Algorithmic direction is a data-driven and technologically mediated form of control that proves more inescapable but more efficient in practice. Such "digital subordination" fundamentally transcends the conceptual boundaries of traditional personal subordination[7] and renders the conventional framework inadequate to address the numerous distinctive yet increasingly prevalent phenomena that characterize platform-based employment relationships. Internationally, the UK Supreme Court's 2021 ruling in Uber BV v

Aslam recognized platform drivers as "workers" rather than independent contractors, emphasizing that algorithmic control (e.g., fixed pricing, rating systems) constitutes indirect subordination[16]. In China, the 2022 case of "Wang Mou v Ele.me" further highlighted how opaque algorithmic reward-penalty mechanisms can silently erode workers' autonomy, raising concerns about technological ethics in labor relations.

2.2. The Conceptual Ambiguity of Economic Dependence

The traditional framework of the employment relationship has long considered the degree of economic dependence of workers on the employer as a pivotal criterion. However, the emergence of flexible employment models has made this standard increasingly problematic due to the diversification of workers' income sources. As Professor Sun Chunlong persuasively argues, the conventional economic dependence test presupposes that workers make their living only in one company. The assumption underpins the very rationale of this doctrinal approach. Yet this foundational premise fails to account for the reality of ride-hailing drivers who typically provide services on multiple platforms simultaneously. These workers strategically allocate their working hours and prioritize orders across different platforms based on real-time demand and earning potential, thereby creating a polycentric income structure that defies singular attribution to any particular platform[8].Professor Zhang Liang further problematizes this issue by demonstrating how the economic dependence calculus in platform work extends beyond mere working hours to encompass complex variables. These variables cover market-driven fluctuations in service demand, the decisive role of algorithmic task allocation in income generation, and the dynamic effects of platform-specific incentive and penalty mechanisms. This multidimensional dependency matrix produces income volatility patterns that cannot be adequately captured in traditional economic subordination metrics.[9] The paradigmatic challenges posed by multi-platform engagements of workers in platforms and algorithmically-mediated earnings variability have thus fundamentally destabilized the conceptual and practical utility of conventional economic dependence analysis in employment classification.

2.3. The Erosion of Organizational Integration

The concept of organizational subordination, a cornerstone of traditional employment relations, presupposes a subordinate position of workers within an established organizational hierarchy of employers. However, this criterion proves increasingly inadequate in the context of the platform economy, where workers engage in platforms primarily as task performers rather than as integrated members of an organizational structure. As Professor Jia Mengqi's research demonstrates, ,while food delivery riders utilize the platform's order dispatch system, they are fundamentally excluded from the platform's internal governance and operational decision-making processes. Their engagement is strictly task-oriented, with all work activities circumscribed by discrete order fulfillment. The pattern amounts to a series of ephemeral contractual arrangements rather than an enduring organizational affiliation. This transactional model manifests several legally salient characteristics: riders neither participate in platform-organized meetings or training sessions, nor are they subject to internal performance evaluations. Crucially, they are not formally recognized as employees within the organizational framework of platform. These operational realities effectively negate the juridical relevance of organizational subordination in classifying such work relationships, and reveals a fundamental disconnect between traditional labor law constructs and the decentralized operational models of digital labor platforms[10]

3. Pathways to Reform Employment Relationship

3.1. Regulatory Reform for Platform-Based Employment Relationships

3.1.1. The Improvement of Legal Text

The complexity of employment relationships in the new economy requires a multi-tiered classification system. In 2021, Ministry of Human Resources and Social Security of the People's Republic of China, along with seven other ministries, jointly issued the Guidelines on Protecting Labor Rights of New Employment Form Workers (hereafter as New Guidelines on Protecting Labor Rights). The New Guidelines on Protecting Labor Rights introduced the new situations that "do not fully meet the criteria for the establishment of employment relationships, but are involved in the management of employers." This established a tripartite classification which specifically refers to the standard employment relationship, the non-standard employment relationship, and the civil relationship. While the boundaries between the three categories stated above may be unclear, the New Guidelines on Protecting Labor Rights represents a necessary response to the inadequacy of the traditional binary framework in addressing the realities of the platform economy. However, specific provisions for the implementation of non-standard employment relationships in the current legal system still lacks, which poses a new challenge for practical enforcement. Further theoretical research ought to urgently focus on defining criteria for non-standard employment relationships and delineating the scope of workers' rights within this category[11]. Drawing on the U.S. "ABC Test" and EU's "dependent gig worker" classification, China could establish a multi-factor evaluation model including: 1) degree of algorithmic control (e.g., mandatory acceptance of 80%+ orders); 2) economic dependence (platform revenue accounting for ≥60% of total income); 3) tool ownership (platform-provided equipment vs. self-owned). Workers meeting 2+ criteria would be classified as "non-standard employees," entitled to partial social security coverage proportional to their dependency level.

The ambiguity in existing legislation underscores the imperative to establish precise legal definitions and develop detailed regulatory frameworks to guide judicial practice.

3.1.2. Legal Channels for Algorithmic Regulation

As the core technology underpinning platform economies, algorithms require strong legal tools of governance to ensure their legitimacy and fairness in protection of worker rights. Scholars advocate for legislative mandates that require platforms to disclose algorithmic logic and grant workers the right to appeal algorithmic decisions. Professor Tian Ye, in *The Labor Law Approach to Regulating Platform Algorithms*, identifies three key regulatory dimensions. The first dimension refers to the establishment of content and procedural legality standards for algorithm development, modeled on labor regulations. The second dimension is the Implementation of collective bargaining mechanisms to safeguard workers' rights to algorithmic transparency and participation. The last dimension means to strengthen labor inspection and judicial relief systems so as to enforce algorithmic accountability.[12] Specifically, platforms should be legally required to: 1) disclose algorithmic logic for key decisions (e.g., order allocation, performance evaluation) in plain language via worker portals; 2) establish an independent "Algorithmic Dispute Mediation Committee" composed of trade union representatives, legal experts, and workers, with the authority to audit algorithmic bias cases within 15 working days; 3) submit annual algorithmic transparency reports to labor authorities, certified by third-party technical institutions.

3.2. Judicial Standardization

Current judicial practice exhibits significant inconsistency in determining employment relationships within the new economy, resulting in divergent rulings.[13] As Xiong Wang highlights in Research on Employment Relationship Determination Between Live Streamers and Platforms, this underscores the need for the Supreme People's Court to issue judicial interpretations and guiding cases to establish uniform standards. Guiding cases, which are carefully selected based on their representativeness, serve to constrain judicial discretion within reasonable bounds. By providing clear legal standards and adjudicative approaches for similar cases, they reduce subjectivity in judicial decision-making while enhancing consistency and authority.

3.3. Adaptive Reforms of Social Security Systems

The flexible nature of platform work poses fundamental challenges to traditional social security frameworks, that leave many workers without access to conventional employment-based benefits. Scholars propose expanding social security coverage through flexible employment schemes. Yin Xiaolin's Social Security System Construction for New Employment Forms in the Digital Economy argues that traditional systems designed for standardized employment cannot accommodate the diversified work arrangements of the digital era. Consequently, it is imperative to expand the coverage of social security systems while implementing differentiated contribution bases and benefit structures for distinct categories of work arrangements. This tiered approach must account for both the heterogeneity of employment forms and the fundamental characteristics of various social insurance programs. Crucially, platform operators should be mandated to assume proportionate social responsibilities through institutionalized participation in social security financing. Such measures would establish a sustainable framework to address the current protection gaps faced by digital economy workers, while maintaining the actuarial integrity of social insurance systems. The proposed reforms recognize that traditional employer-centric models require adaptation to accommodate the decentralized nature of platform work, without compromising the core principles of social risk pooling and solidarity that underpin modern welfare states[14].A "flexible employment social security account" could be established, allowing workers to: 1) pay contributions on a per-order basis (e.g., 3% of each order fee deducted by the platform as social insurance premium); 2) accumulate contributions across multiple platforms, with unified management by the National Social Security Administration; 3) choose between "employee-style" (higher contribution, higher benefits) and "residential-style" (lower contribution, basic coverage) schemes. Platforms would be required to contribute an additional 2% of workers' gross income to a centralized risk pool for occupational injury insurance.

4. Conclusion

The determination of employment relationships in the new economy has emerged as a critical research frontier in labor law scholarship and represents one of the most contentious practical challenges in contemporary judicial practice. Substantial academic divergence persists regarding the appropriate criteria for identifying such relationships, and the path toward resolution remains complex and protracted. Moving forward, a comprehensive institutional response—encompassing legislative refinement, judicial interpretation, and parallel reforms to social security systems—must be implemented to create a more adaptable, equitable, and inclusive framework for the classification of employment relationship. Such systemic innovation is essential to reconcile the evolving demands of platform-based business models with fundamental worker protections in the digital age. This study primarily focuses on food delivery and ride-hailing sectors, leaving room for future research on emerging forms like live-streaming commerce and metaverse labor. Additionally, qualitative research—such as in-depth interviews with platform workers—could further illuminate the subjective experiences of "digital subordination." As artificial intelligence continues to reshape work, future studies may explore legal frameworks for AI-generated employment relationships and the boundary between human labor and machine operation

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