Hogan Lovells

Insights and Analysis

Global guide: Independent contractors, potential misclassification issues, and labor implications

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In today's labor market, classifying workers as employees or independent contractors is crucial, especially in diverse legal landscapes like the U.S., the UK, Spain, Germany, Mexico, the Netherlands, Italy and France. This guide explores the criteria and legal frameworks each country uses, highlighting the financial and legal risks of misclassification. It examines the roles of bodies like HMRC and labor courts in assessing status and offers insights for companies reclassifying workers without non-compliance. The guide also discusses the gig economy's impact on classification, focusing on legal developments like the UK's Supreme Court rulings, recent amendments to labor law in Mexico, and Spain's "Rider Law." As regulations evolve, understanding these complexities is vital for businesses to ensure compliance and protect worker rights.

Chapter **1**

General employment perspective

1.1 What are the current elements, tests, or typical indicators utilized to determine whether a worker is classified as an employee or independent contractor?

United Kingdom

The UK distinguishes between employees, workers, and the self-employed. Employees have the most extensive employment rights, while workers are entitled to receive the national minimum wage, holiday pay, and protection against discrimination, but not to family-related leave or redundancy pay, and cannot bring unfair dismissal claims. Tax law only distinguishes between employees and independent contractors.

Individuals are employees if the employer has control over their work, there is mutuality of obligation (an obligation on the employer to offer, and on the employee to perform work), the individual has to provide their services personally and there is nothing that would be inconsistent with an employment relationship.

Individuals are workers if they have a contract with the employer, they are obliged to perform services personally, and do not carry on a business.

Courts and tribunals will look at how a relationship operates in practice when deciding status issues, not just at the contractual terms. The requirement to perform services personally is an essential element of both employee and worker status.

Spain

Under Spanish labor law, the classification of a professional as an employee or a contractor is determined by how services are actually rendered, rather than the type of contract executed. The assessment is based on a set of well-established criteria developed through legislation and case law. The key indicators include:

- **Subordination and control**: The existence of managerial authority by the company over how, when, and where the services are performed, such as setting working hours, assigning tasks, or supervising performance, typically indicates an employment relationship.
- **Organizational integration**: Where the worker is integrated into the company's business structure and contributes under the direction and within the operational framework of the organization, it is likely to be considered an employee.
- **Provision and use of tools or infrastructure**: If the company provides the means necessary to perform the services (e.g., equipment, digital platforms, credentials, or premises), this may suggest that the worker lacks true autonomy and thus is an employee.
- **Economic structure of remuneration**: Fixed and regular payments, particularly those resembling a salary, can support the presumption of employment, especially when not linked to project-based deliverables or commercial risk.
- **Assumption of business risk**: Independent contractors generally operate at their own economic risk, bearing potential profit or loss. The absence of such risk (i.e., guaranteed remuneration irrespective of performance) can be indicative of an employment relationship.

Germany

Under German law, the classification of a worker as an independent contractor or an employee depends mainly on the way the worker is treated in his or her day-to-day work. The fact that contractual agreements are referred to by the parties as a "freelancer agreement" or "independent contractor contract" is not in itself decisive for the classification under employment law, Social Security law, and tax law.

If workers have to provide personal services (i.e., they have to perform the services themselves and cannot send a substitute in their place); are under the direction and control of the principal in terms of how, when, and where the work is done; do not act and appear as an entrepreneur (i.e., with their own website or employees) and are integrated into the business, those are – in the overall view – indicators that point strongly toward an employment relationship rather than one of an independent contractor.

Italy

Case law has identified the following main features of a work relationship that may ground a reclassification claim of an independent contractor into a subordinate employee (regardless of whether they are mentioned in the contract or not, but only if they occur in practice):

- Constantly receiving and/or giving orders and instructions by/to personnel of the principal
- Constant presence at work (physically or from remote), especially if at fixed hours and characterized by a real obligation to be present/connected in case of remote work (and therefore with the need to give notice and justification in the event of absence)
- A fixed salary with payments at scheduled and regular times
- Obligation to agree holiday/justify absence from work
- Use, for the performance of work, of tools belonging to the employer (e.g., email account, smartphone, car, etc.)
- Lack of own business activity of the worker and of the corresponding structure, even if minimal

In addition to the above, it is worth mentioning that art. 2 of Legislative Decree 81/2015 expressly extends the discipline of the subordinate employment relationship to organized collaborators whose working activity is (i) predominantly personal, (ii) continuous, and (iii) based on modalities of execution of the performance organized by the principal.

The Netherlands

Current criteria:

Under Article 7:610(1) of the Dutch Civil Code, a worker is considered an employee if:

1. Work is performed for a period of time,
2. Authority exists (employer can direct/control work), and
3. Remuneration is paid.

The Dutch Supreme Court uses a holistic test, considering contractual terms, actual working practice, and circumstances such as:

- Freedom to organise work,
- Nature of remuneration and number of paying clients,
- Entrepreneurial risk borne by the worker,
- Provision of own tools, materials, and consumables,
- Continued payment during leave or illness,
- Performance of other work alongside the agreed tasks,
- Occasional nature of the work,
- Deduction of social security/payroll taxes by the employer, and VAT payment by the worker.

New classification framework anticipated from 1 January 2026:

It is anticipated that a new set of rules will come into effect on 1 January 2026. The new framework will:

- Assess core indicators of employment or self-employment,
- Weigh mixed indicators,
- Use general economic behaviour as a tie-breaker.

A presumption of employment will apply if earnings are below €33/hour (excl. VAT), shifting the burden of proof to the employer.

France

In French law, the employment relationship is defined by three key elements: the performance of work, the payment of remuneration for this work, and the presence of a subordination relationship between the employee and the employer. It is this last element that distinguishes an employee from an independent contractor.

Unlike an independent contractor, an employee performs work under the authority of their employer, who possesses the power to issue orders and directives, oversee the execution of assigned tasks, and impose sanctions for any shortcomings or mistakes.

United States

The last administration utilized the Economics Reality Test (29 CFR 795), which assesses the following factors to determine whether a worker is an employee under the Fair Labor Standards Act (FLSA) or an independent contractor:

1. Opportunity for profit or loss depending on managerial skill,
2. Investment by the worker and the employer,
3. Degree of permanence of the work relationship,
4. Nature and degree of control,
5. Whether the work performed is integral to the employers' business, and
6. Skills and initiative.

Other additional factors can be considered if it is relevant to whether the worker is economically dependent for work.

While this enforcement standard has not been officially altered, the Department of Labor (DOL) issued a field assistance bulletin (FAB) on May 1, 2025 stating that they are working on developing a new standard, and that the Trump administration will no longer enforce the Economic Reality Test.

Enforcement will now rely on principles outlined in Fact Sheet #13 which highlights that the following factors:

1. The extent to which the services rendered are an integral part of the principal's business.
2. The permanency of the relationship.
3. The amount of the alleged contractor's investment in facilities and equipment.
4. The nature and degree of control by the principal.
5. The alleged contractor's opportunities for profit and loss.
6. The amount of initiative, judgment, or foresight in open market competition with others required for the success of the claimed independent contractor.
7. The degree of independent business organization and operation.

What is not considered under either analysis is the job title/label, whether the worker receives a 1099 and/or signed an independent contractor agreement, the place where the work is performed, whether a worker is licensed by State/local government, and the time or manner of pay.

Mexico

Under Mexican labor law, the classification of an individual as an employee or a contractor is determined by the nature of the services rendered services and how are they actually rendered, rather than the type of contract executed. The assessment is based on the existence or absence of subordination or control (defined by the Supreme Court as the right of the employer to command and the duty of the employee to obey). If there is subordination there is an employment and therefore all labor and social security rights and benefits are triggered. Based on local labor law, an employment is presumed when personal services are rendered in exchange of remuneration. Some additional key indicators in an employment include:

- **Control**: The existence of managerial authority by the company over how, when, and where the services are performed, such as setting working hours, assigning tasks, or supervising

performance, typically indicates an employment relationship.

- **Organizational integration**: Where the worker is integrated into the company's business structure and contributes under the direction and within the operational framework of the organization, it is likely to be considered an employee.
- **Provision and use of tools or infrastructure**: If the company provides the means necessary to perform the services (e.g., equipment, platforms and systems, credentials, corporate emails or premises), this may suggest that the worker lacks true autonomy and thus is an employee.
- **Economic structure of remuneration**: Fixed and regular payments, particularly those resembling a salary, can support the presumption of employment.
- **Assumption of business risk**: Independent contractors generally operate at their own economic risk. The absence of such risk can be indicative of an employment relationship.
- **Other elements that can presume employment**. Some additional elements that likely presume employment are: being the main or only source of income, issuing consecutive or mainly consecutive invoices, providing the services on a permanent basis or for extended period of times, providing the services exclusively for the company, that benefits are granted to the individual and/or that the individual is treated as an employee, that there are policies or guidelines applicable to the individual that could presume subordination, etcetera.

1.2 If a worker is misclassified as an independent contractor, what are the potential risks and liability?

United Kingdom

There are tax and employment-related risks in this situation. If the independent contractor is an employee, the employer will be liable for income tax deductions that it should have made from the individual’s pay and for backdated national insurance contributions. It may also face fines or other penalties from HMRC in some cases.

The employer may also face individual employment-related claims such as for unpaid holiday pay or failing to pay the national minimum wage if the individual is claiming to be a worker or an

employee, and for unfair dismissal if the individual is claiming to be an employee.

HMRC has responsibility for enforcing minimum wage legislation (as well as tax law) and can penalize employers that fail to pay the national minimum wage. It also operates a "name and shame" policy.

Spain

If contractors are reclassified as employees by the Labour Inspectorate or by a labor court, the following consequences could arise for the company:

A. Employment consequences:

1. The contractor would be deemed to be an employee of the company for all purposes as from the date of hiring so the contractor would be entitled to enjoy all the terms and conditions applicable to the employees of the company (e.g., remuneration, holidays, resting time, Social Security contributions, benefits, any other CBA benefits/provisions, etc.).
2. The contractor could claim the benefits that he/she would have accrued as an employee during the last year of services (remuneration, benefits, etc.) plus 10 percent yearly interest in case of economic rights/benefits.
3. Contractor could be entitled to receive a severance compensation for unfair dismissal (amounting to 33 days of salary per year of service up to 24 months' salary, assuming that he/she was hired after February 2012) in case of termination of their relationships with the company taking into account as the length of services the start date of services.

B. Social Security/training programs consequences:

1. Social Security could claim the contributions that were not effectively made during the last four years, plus 20 percent in interest of the total unpaid amounts (surcharge).
2. A fine ranging between 100 percent and 150 percent of the unpaid Social Security contributions

for the contractor, including interests, surcharges, and costs.

3. A fine ranging from €3,750 to €12,000 could be imposed on the company due to the lack of registration of the consultant with the Spanish General Social Security Scheme as a dependent employee.

4. The contractor could claim the Social Security benefits to which he/she would have been entitled, had the Social Security contributions been correctly made (e.g., differences on future pensions).

5. The company could lose the right to apply discounts on employment programs or vocational training programs and may be denied the possibility to apply them for a period of up to 24 months.

C. Other consequences:

i. In a worst-case scenario, a prohibition to contract with the Spanish public authorities for a maximum period of three years, and

ii. Potential tax, intellectual property, criminal, and health and safety issues may also arise.

Germany

Misclassification in Germany can result in significant additional payments, in particular for Social Security contributions and taxes. In very severe cases, it can even lead to criminal charges for the principal.

Misclassification also results in the worker being entitled to statutory employee rights such as protection against dismissal, sick pay, and annual leave.

Italy

The worker would be entitled to claim:

- Any salary difference between the compensation he/she should have received as an employee and the compensation actually received

- Indemnity for any vacation he/she should be able to prove to not having taken
- Other benefits provided by the NCLA that results should be applied to the relationship
- Any seniority bonuses, performance bonuses, and any other treatment applied by the principal to its employees
- In case of termination, the application of the relevant rules on dismissal of employees (i.e., the period of notice or the payments of the indemnity in lieu)

In addition, from a Social Security point of view, the employer could be condemned to the payments of:

- The contributions that have to be paid to the national social security fund (INPS) for employees
- A compensation pursuant art. 2116 of the Italian Civil Code for any damage arising for the worker as consequence of the omitted Social Security contribution by the principal

The Netherlands

Misclassification of independent contractors as employees may lead to liabilities towards tax authorities and the employee insurance agency. The following liabilities may arise:

- Reclassification may result in additional tax costs for the employer.
- A requalification may result in the employer being required to pay certain benefits, potentially for the entire duration of the agreement with the individual (which is classified as an employment agreement), including: (a) pension contributions for the worker to the pension fund; (b) sickness benefits or accrued holidays of the contractor; and/or (c) a severance payment to the contractors that have not been extended or have been terminated.

France

If a worker is misclassified as an independent contractor, the protective provisions of labor law would apply to the relationship. Should the contract be reclassified after the conclusion of the independent contractor's assignment, the contractor could then contest the lack of implementation of the dismissal procedure and obtain severance pay as well as payment for notice and compensation for

dismissal without real and serious cause. Additionally, they may be entitled to payments for accrued leave, participation, profit-sharing, and other bonuses.

Moreover, there is a risk of a URSSAF reassessment, which may lead to an adjustment of social security contributions for amounts paid as remuneration for services provided during the current year and the preceding three years. Finally, the employer may be subject to legal proceedings for concealing work and be held financially responsible for damages equivalent to six months' salary.

United States

Worker misclassification typically carries a significant risk of liability for employers depending on the severity of the infractions. Employers can be held liable for violations, including but not limited to failure to comply with wage laws under the FLSA and applicable state wage laws, as well as for failure to withhold and remit state and federal payroll taxes and comply with Form I-9. This brings the potential for hefty fines, criminal penalties and civil liability

Mexico

Employee misclassification also carries a significant risk of liability for employers. If an individual is considered an employee he/she will be entitled to claim all labor and social security rights in accordance with local labor and social security laws.[1]

In addition, the Mexican Social Security Institute (IMSS) is able to request the payment of the omitted social security contributions, applying additional fines, adjustments and burdens for the lack of payment.[2]

Considering that minimum employment rights may not be validly waived, and the fact that even if a commercial agreement is executed between the company or contracting party and the contractor, if the subject matter of the agreement is in essence an employment relationship, then the commercial agreement will be considered null and void in case of litigation.

In case the individual has an accident or dies, they could request the corresponding severance and payments set forth by the law and the IMSS could also request the payment of medical attention

provided (when applicable), plus additional fines and burdens as well as the payment of the corresponding omitted contributions as mentioned above.

1.3 Who is the competent body to assess the qualification? (i.e., a court, tax authority, etc.)

United Kingdom

HMRC can issue a tax determination on an individual's status. An employer (or the individual) can appeal a determination through the tax tribunal system.

Individual employment-related claims are pursued by individuals through the employment tribunal system.

National minimum wage liabilities can be enforced by HMRC or through individual employment tribunal claims.

Spain

The competent bodies to assess the qualification are:

- **Labour Inspectorate**, and
- **Labor courts**.

Germany

Under German law, there are various bodies to assess whether an individual is qualified as an employee or an independent contractor. The specific body responsible for assessing the status depends on the background of the examination.

The German Pension Insurance Fund (*Deutsche Rentenversicherung*) regularly assesses the qualification during company audits. Additionally, it can determine a worker's status upon request in a status determination procedure (*Statusfeststellungsverfahren*).

Moreover, a health insurance fund (*Krankenversicherung*), a tax office (*Finanzamt*), or a court may also be responsible for evaluating the classification, depending on the context (e.g., audits, individual court proceedings, deduction of wage tax). Furthermore, customs authorities may examine the classification to combat illegal employment.

Italy

Labor courts and, as to Social Security contribution matters, INPS.

The Netherlands

The subdistrict court (*kantonrechter*) is the competent body to assess the qualification of an employment relationship. The Dutch Tax Administration (*Belastingdienst*) may impose corrective fines or taxes.

France

The request for reclassification of the employment contract will be submitted by the independent contractor to the Labor Court.

In the event of a dispute concerning the termination of the contract and if the Labor Court does not reclassify the relationship as an employment contract, the case will then be referred to the civil or commercial courts, which will judge whether the termination of the relationship was abrupt or not.

United States

The DOL's Wage and Hour Division along with the court system will assess whether an individual is properly qualified as an employee or independent contractor.

Mexico

The Labor Courts, in case of a labor claim, as well as the Labor Ministry, which is able to impose fines for noncompliance with labor obligations. The Mexican Social Security Institute is able to review compliance with social security obligations, as well as impose fines, adjustments, surcharges, and omitted contributions. Eventually, in extreme cases, omitted social security obligations could be considered tax fraud.

1.4 If a company believes there are individuals misclassified, how do they go about re-classifying workers without flagging potential non-compliance?

United Kingdom

This will depend on whether individuals are being re-classified as employees or workers.

It is difficult to re-classify contractors as employees without flagging non-compliance because of the need to deduct tax and national insurance contributions from employee pay. Employers sometimes offer contractors an employment contract without acknowledging that they may already legally be an employee. The contractor must agree to be engaged as an employee on the new terms.

It is easier to re-classify contractors as workers. The key financial risk of mis-classification relates to holiday pay claims stretching back to the start of the relationship. Employers can decide to start paying holiday pay, without formally acknowledging that individuals are already likely to be workers. Employers would also need to review pay rates to ensure that workers are receiving the appropriate national minimum wage and increase pay levels if necessary. Employees would then need to claim for holiday pay or minimum wage for earlier periods promptly.

Spain

Where a company identifies potential inconsistencies in the classification of certain individuals, it may consider reviewing the structure of those engagements and implementing adjustments going forward. This can include modifying contractual terms, revising the operational setup, or offering formal employment arrangements where appropriate.

Germany

If a company believes there are individuals misclassified, an internal audit should be carried out immediately. This allows indicators of false self-employment to be identified and eliminated, ensuring future compliance. Dealing with the potential consequences of earlier misclassification is highly complex as this can constitute administrative or criminal offenses and can trigger relevant obligations to pay taxes and contributions. Additional legal advice is highly recommended.

Italy

Principal, independently from the continuation of the relationship as employment or not, may try to seek periodical signing of settlement agreements with the contractor in which he/she recognizes that, until that moment, the relationship has been carried out by way of a genuine independent contractor relationship.

The Netherlands

Companies should determine whether independent contractors are indeed treated as such based on an assessment of relevant factors. If not, the company should consider amending and optimizing the independent contractor agreements and the factual execution of the agreement. It can however not be excluded that potential non-compliance is being flagged.

France

It is the responsibility of the employer to ensure that on a daily basis, no subordination relationship exists between the independent contractor and themselves.

Consequently, the employer must ensure that the independent contractor is asked about their availability and that no schedules are imposed. The independent contractor can, within the limits of the signed contract, accept or refuse a service and is also free to organize their professional activity.

Similarly, the employer should not give peremptory instructions to the independent contractor. The latter is not subject to the same monitoring rules as employees and is therefore not evaluated and should not be managed as an employee. In this context, disciplinary action cannot be taken against them.

United States

If a company suspects there are individuals who have been misclassified, it should immediately undergo an internal audit to identify all misclassified workers. Once the misclassified workers are identified, the company should formalize their employment status by entering into a contract with the affected individuals. A company concerned that it may have misclassified workers should work closely with counsel to strategize how best to complete the re-classification of misclassified

employees. The misclassified employee would be entitled benefits such as wages and overtime pay that the employee would have received if he/she was classified correctly. There are also federal and state penalties and fines that counsel can assist in working through. For example, the IRS offers a Voluntary Classification Settlement Program, which is a voluntary disclosure program that lets companies, under certain circumstances, re-classify their employees and avoid penalties.

Mexico

If a company identifies potential inconsistencies in the classification of certain individuals, it must review the correspondent contractual arrangements, the structure of the relationship, and implement adjustments going forward. This can include modifying contractual terms, revising the operational setup, terminating the current relationship and/or offering formal employment arrangements where appropriate.

1.5 General recommendations to reduce the risk of reclassification of independent contractors into employees

United Kingdom

Employers can make sure that their contractual documentation supports their classification argument. Normally, this would be through using a consultancy agreement that includes suitable provisions such as a right to provide a substitute worker, a definition of the services that the individual will provide, confirmation of how the individual will be paid, and the time that workers must spend on the services. Ideally, these will demonstrate self-employment (such as a fixed rate for a job rather than an hourly, daily, or weekly pay rate).

However, as noted above, employee classification depends on the reality of the situation and not on the contractual documentation. If the way the relationship operates in practice does not reflect the contractual terms, the individual may still be regarded as an employee or a worker. For example, a power of substitution will normally mean that an individual is not required to provide their services personally and cannot be a worker or employee. If the evidence suggests that the parties did not intend a contractual substitution right to be exercised, the tribunal or court will disregard it.

Spain

To mitigate the risk of misclassification, companies should implement preventive measures and internal controls that ensure independent contractor relationships are both legally sound and factually consistent with their intended structure. The following recommendations may be considered:

- Before engaging a contractor, assess the role against the legal criteria outlined in section 1.1, documenting the rationale for the classification.
- The contract should clearly reflect the contractor's independence, including control over work methods, schedule, and the assumption of economic risk. However, formal wording must be supported by consistent day-to-day implementation.
- Avoid features indicative of employment, as setting fixed working hours, assigning ongoing tasks under supervision, or integrating the contractor into internal systems or organizational charts.

Germany

As mentioned above, the assessment of false-self-employment depends mainly on the way the individual is treated in his or her day-to-day work. It is therefore essential that an individual risk assessment based on the criteria specified in section 1.1 is carried out at the beginning of every collaboration with a freelancer.

However, this is usually not sufficient, as in some cases the ongoing practical implementation of the contract deviates significantly from its agreed wording. It is therefore advisable to regularly check whether there have been any changes to the risk assessment carried out at the beginning of the collaboration. In cases of uncertainty or complex cases, it is recommended to consult a lawyer and obtain their assessment.

Italy

Pay attention to the indicators of a subordinate employment relationship and try to reduce as much as possible their occurrence. Adequately train management to manage the relationships with independent contractors, in order to keep it as a true mere coordination for the management of their

activity by not providing them strict orders and directives on their working activities and on the timing with which it has to be carried out.

The Netherlands

From a Dutch employment law perspective, it is crucial to avoid similarities with an employment agreement during the term of the independent contractor agreement (e.g., a 40-hour work week, monthly fee, expense allowances, performance reviews, etc.) and to organize services differently from the work under the existing employment agreements.

France

In addition to complying with the above-mentioned requirements during the execution of the contract (section 1.1) and to reduce the risk of reclassification of independent contractors into employees, the employer must, before signing any contract, ensure that the independent contractor has their own legal entity, website, and email address in order to prove that they are self-employed and avoid any risk of requalification.

Therefore, the independent contractor should not receive a salary: their fees must be based on the services provided, and these services must be the subject of an estimate and an invoice specifying the content of the service.

The employer must also ensure that the independent contractor is able to perform their service using their own equipment.

United States

It is recommended that employers conduct continuous internal audits, which should include reviewing current contractor agreements and assessing the company's level of control and business integration to identify workers who are potentially misclassified as independent contractors. For properly classified independent contractors, a company should use clear independent contractor agreements that clearly outline the scope of work, payment terms and autonomy. Additionally, companies should avoid including restrictive exclusivity clauses and ensure that all contracts comply with local employment laws.

Mexico

Companies must ensure that their contractual documentation supports their classification argument and the actual relationship is consistent with the type of relationship. Normally, this would include using a consultancy agreement that includes suitable provisions and ensures no subordination is presumed.

However, as noted above, employee classification depends on the reality of the situation and not on the contractual documentation. If the way the relationship operates in practice does not reflect the contractual terms, the individual may still be regarded as an employee and trigger all labor and social security rights and obligations. In addition, if the contractor is indeed independent, this must be reflected in the agreement and the relationship must be independent and without control over the contractor´s own resources and elements.

Chapter **2**

Gig economy and digital platforms

2.1 How has the growth of the gig economy and digital platforms affected the proper classification of workers?

United Kingdom

Individuals working in the gig economy have brought claims against many platforms, arguing that they are legally workers, not independent contractors. The claims are normally for failure to pay the national minimum wage and holiday pay. Gig economy workers have not typically argued that they are employees because their freedom to work (or not work) when they choose normally means that there is no mutuality of obligation between them and the platform.

The UK's Supreme Court found that drivers engaged through a platform were workers. The degree of control exercised by the platform over how the services were provided was very important to the outcome. Claims have, however, failed if a platform has been able to show that there is no obligation to perform services personally, by pointing to a genuine contractual right of substitution that workers have exercised.

Spain

The expansion of gig-based digital platforms has significantly blurred the boundaries between traditional employment and self-employment. While platforms often treat workers as independent contractors to maximize flexibility and reduce costs, courts and regulators have increasingly scrutinized these relationships.

In Spain, this has led to increased regulatory intervention and judicial rulings asserting that many of these workers (particularly delivery couriers) are economically dependent, lack autonomy, and are effectively operating under employment conditions. As a result, many platforms have been forced to shift their workforce to employment models, particularly after the introduction of new legislative provisions addressing this classification.

Germany

The growth of the gig economy and digital platforms has impacted the classification of workers as traditional working models have been challenged by flexible, project-based work. This has led to uncertainty and legal disputes over whether such workers should be classified as employees or as independent contractors. Within the last few years, case law of the Federal Labour Court and Regional Labour Courts has clarified the criteria. In addition, the growth of the gig economy has triggered the new laws on the classification of platform workers, as described in 2.2.

Italy

Case law orientation changed in 2019. Indeed, in 2019, the provision under the art. 2 of Legislative Decree 81/2015 (which, as previously mentioned, extends the discipline of the subordinate employment to organized collaborators whose working activity is (i) predominantly personal, (ii) continuous, and (iii) based on modalities of execution of the performance organized by the principal, the "**Organizational Methods**") was expressly declared applicable – by way of a new law provision – also to workers who operate through digital platforms.

In particular, the 2019 amendment has led case law to extend the concept of Organizational Methods of the principal, that are currently identified also in all the instructions/requests/assignment criteria/evaluation system that the principal's algorithm uses to allocate the work among the gig economy workers. So, currently, whether the platform establishes (i) where the worker should physically be in order to be considered available to render the service, (ii) when he/she shall be available, (iii) to whom to assign the order/commission according to its own parameters, and (iv) what behavior the worker shall adopt during the performance of the service, a reclassification into employment may occur.

Furthermore, given the increasing use of platforms/algorithms by contractors or employers to organize work, in 2022, specific disclosure obligations in the case of the use of automated decision-making or monitoring systems have been introduced. In particular, these obligations require the principals/employers to provide all the information relating to the operation of the automated systems it uses, so as to allow their workers to understand how the automated system assigns the tasks, evaluates them, and provides indications.

The above obligation needs to be fulfilled not only with respect to employees, or organized collaborators pursuant art. 2 of Legislative Decree no. 81/2015, but also in relation to the so-called "digital self-employed pursuant to Article 47-bis" (please see 2.2 below).

In conclusion, the growth of gig economies has resulted in (i) an increasing expansion of the scope of application of art. 2 of Legislative Decree no. 81/2015, in order to make gig economy workers subject to the typical guarantees of subordinate workers and (ii) an extension of the disclosure obligations of the principals/employers.

The Netherlands

The expansion of the gig economy and digital platforms has made it difficult to distinguish between traditional employees and people who are self-employed. Platforms claim that the workers are self-employed. This comes with several benefits, such as maximal flexibility and the ability to ignore strict employment laws regarding, e.g., sickness and termination.

In the Netherlands, this has led to several judicial rulings, interference of the Tax Authority, and upcoming new legislation. These actions and rules assert that many of these workers are actually traditionally employed and not self-employed

France

The growth of the gig economy and digital platforms has significantly complicated the proper classification of workers. In France, platform workers are typically designated as independent contractors, a status that offers far fewer protections than that of employees. For instance, they often lack access to paid leave, sick leave benefits, and other forms of social protection.

However, in some cases, the nature of their work reveals indicators of subordination – such as controlled schedules, performance monitoring, and lack of autonomy – suggesting that these workers may in fact be operating under conditions similar to those of traditional employees. This has led to

numerous legal actions aiming to reclassify platform workers under employment law (see section 2.2 below).

Despite growing recognition of the issue, not all platform workers meet the legal criteria for employee status. Each case is assessed individually, primarily based on the degree of subordination and control exerted by the platform (see section 2.2 below). This has highlighted the limitations of the traditional binary distinction between "employee" and "self-employed" statuses.

In reality, the working conditions of platform workers often fall somewhere in between these two categories. While some seek the security and protections of employee status, others value the flexibility and autonomy that comes with being self-employed. The French government's choice has been to consider platform workers as self-employed, while granting them better protection. France has legislated twice on platform workers. In 2016, a law established a principle of social responsibility for platforms by imposing coverage against work-related accidents, a right to access to professional training, the right to refuse to provide services collectively to defend professional claims, and the right to form a trade union organization. In 2019, new legislation was introduced to protect the rights of these workers, including the right to refuse a service without penalty, the obligation of platforms to disclose the distance covered and the minimum guaranteed price, after deducting commission fees and the right to select periods of activity and inactivity.

United States

With an increase in the gig economy has come an increase in alleged misclassifications. There has recently been a surge of worker classification lawsuits against high-profile gig-economy companies, such as Lyft, GrubHub, and others. As courts have used a case-by-case analysis via the economic reality test, such litigation has resulted in varying outcomes—some favoring the employee and others favoring the employer. However, with new regulations on the horizon, gig workers may now be more hesitant to file lawsuits. After all, if the DOL is using the July 2008 version of the economic reality test in enforcement, they will likely draft a similar rule for the new code which courts will interpret.

Mexico

There was a recent amendment to the local labor law by which individuals hired and/or rendering

services through a digital platform must be considered employees if their remuneration exceeds one minimum wage per month. This reform (effective as of June 2025) triggered labor and social security obligations for digital platforms and labor rights and special obligations for individuals rendering services through them.

2.2 Law provisions and case law requiring workers in digital platforms being classified as employees or providing specific indicators or features of work for digital platforms entailing reclassification into employment

United Kingdom

There are no specific rules relating to employee classification and digital platforms and the normal employment status tests apply. Several cases have considered how those apply to digital platform workers, including the Supreme Court decision referred to previously. This sets out the correct approach to the classification of gig economy/platform workers and the factors that are likely to be relevant to any status assessment. In particular, the Supreme Court emphasized that statutory protection is designed to protect vulnerable workers and should be interpreted in a way that achieves that purpose.

Spain

In 2021, Spain introduced Law 10/2021, commonly known as the "Rider Law," which established a legal presumption of employment for workers providing delivery services via digital platforms. Key features include:

- Digital delivery workers are presumed to be employees unless the platform can prove otherwise
- The law mandates formal employment contracts and the inclusion of such workers in the Social Security system

Supporting case law includes the Spanish Supreme Court's ruling dated 25 September 2020, regarding a leading delivery platform, where the court held that riders were employees due to the existence of control, lack of autonomy, and use of the company's app and resources to perform their duties.

Consequently, some platforms have faced multimillion-Euro penalties and have begun transitioning large numbers of riders to employee status.

Germany

Due to the rapid growth of the gig economy and digital platforms, not only has case law been established to classify workers, but the EU has also adopted a new Platform Work Directive.

A. Crowdworker decision by the German Federal Labour Court

On 1 December 2020, the Federal Labour Court for the first time decided on the **classification of a crowdworker** as either an employee or a self-employed individual. The highest German labor court stated in particular that for the existence of an employment relationship it is particularly important that:

i. The crowdworker is obligated to personally provide the service;

ii. The work owed is simple in nature and its execution is predetermined in terms of content; and

iii. The placing of orders is controlled by the principal through the specific use of the online platform in the sense of external directives.

For the first time, the court stated that the existence of an incentive system on a platform speaks in favor of employee status. In the present case, in order to be able to accept multiple orders, crowdworkers had to increase their level in a rating system through continuous completion of individual orders.

Later, these findings were also confirmed by German regional labor courts.

B. The EU Platform Work Directive

The EU Platform Work Directive will further be of decisive importance for the classification of workers in digital platforms. The directive is intended to improve the working conditions of platform workers

and harmonize their employment status across the EU. The directive stipulates the fundamental legal presumption that the contractual relationship between a digital work platform and a person who performs platform work via this platform is an employment relationship, insofar as national law indicates control and management of the platform worker. As the member states were unable to agree on harmonized criteria for the presumption, it remains the task of the individual member states to determine the specific criteria as part of the implementation of the directive. The directive must be transposed by the member states by December 2, 2026.

Italy

In general, in Italy, digital platform workers can be considered as:

- Organized collaborators pursuant art. 2 of Legislative Decree no. 81/2015 (i.e., subordinate employment discipline apply); or
- Digital self-employed workers pursuant to Article 47-bis (i.e., not employees).

The difference between these two categories is that, while in the case of organized collaborators the platform is based on an algorithm that assigns/allocates the request among the workers, the digital self-employed use the platform only as a work tool.

The criteria identified by case law to distinguish between which category a worker belongs are taken into account.

	Organized collaborators pursuant art. 2 dlgs 81/2015	Digital self-employed pursuant to Article 47-bis
Freedom to organize work	The platform provides zones/time slots in which to connect/perform the service	There are no timetables or place from which to connect

Freedom to accept, decline, and cancel request	The platform sanctions/negatively evaluates the worker who declines/cancels many requests	The platform does not take into account the number of previously declined/rejected requests in the allocation of new requests
Geolocalization	Geolocalization is also used as a performance monitoring tool	Not required or used only for the performance of the service
Ranking	The platform provides a ranking of workers based on their performance and assigns new requests based on their score	The platform doesn't provide a ranking of the workers
Freedom of choice as to how to execute the service	The platform provides instructions on how to perform the service	The platform leaves the worker free to choose the methods of performance of the service

The Netherlands

The following case law is used to determine whether a worker is self-employed or a traditional employee. The legislator is currently working on new legislation to make the distinction between these workers more clear (wet VBAR).

10 points that help figure out whether they are self-employed or traditional employees:

- Nature and duration of the work.
- How work and working hours are determined.
- Integration of the work and the worker into the organization and operations of the client.
- Whether there is an obligation to perform the work personally.
- How the contractual relationship between the parties was established.
- How the remuneration is determined and paid (gross or plus VAT).
- The amount of the remuneration.
- Whether the worker bears commercial risk (entrepreneurial risk).
- The relevance of contractual terms depends on their actual significance for the worker.
- Indicators of entrepreneurial behavior in the economic market

France

Under French law, individuals who are regularly registered as self-employed workers are presumed not to be in an employment relationship. This presumption of non-employment can only be overturned if the individual demonstrates the existence of a relationship of subordination – which is a defining feature of employment status (see section 1.1 above).

This relationship has been recognized in key rulings by the French Court of Cassation in 2018 and 2020, particularly in cases involving platform workers.

To justify a reclassification from self-employed to employee status, judges rely on a body of consistent and converging evidence that establishes the existence of subordination. This requires a case-by-case analysis of the actual working conditions.

For example, in a case involving a meal delivery platform, the court found a relationship of subordination due to the platform's use of a geolocation system. This system allowed real-time tracking of delivery routes, monitoring of total kilometers traveled, and the imposition of sanctions. These sanctions could result in a summons for an interview or even temporary disconnection from the platform.

Similarly, in a case concerning a rideshare company, the court found indicators of subordination in the platform's ability to penalize drivers. Such penalties included fare adjustments for not following designated routes and automatic disconnection from the app after three ride refusals — practices that reflect a level of control consistent with an employment relationship.

United States

The legal landscape remains unsettled on whether workers engaged with Digital Platforms should be classified as independent contractors or employees. Currently, the classification issue largely depends on which state's laws apply. For example, California recently enacted Proposition 22, which allows gig economy companies to classify their workers as independent contractors but requires these workers to receive certain additional benefits, such as health care stipends and minimum earnings guarantees. However, in the Eastern District of Pennsylvania, the court dismissed a case brought by rideshare drivers, ruling that the plaintiffs failed to prove they were employees under the law.

Mexico

As mentioned, there are new labor provisions with special labor and social security rights and obligations for individuals rendering services through digital platforms if their remuneration exceeds one minimum monthly wage per month (approximately USD393 per month). These provisions include social security contributions, benefits, severance in case of termination without cause, profit sharing, and other special provisions. These amendments have impacted gig economy companies and represented adjustments in prices for customers. Since the provisions are recent, it is unclear at

the moment if there will be significant litigation or other impacts derived from these provisions.

Conclusion

The classification of workers as employees or independent contractors is a complex and evolving issue, particularly with the rise of the gig economy and digital platforms. Jurisdictions worldwide are addressing these challenges through legislative reforms, judicial rulings, and regulatory scrutiny, with significant risks for misclassification, including financial penalties and reputational harm. Countries like Spain, Italy, Mexico and the Netherlands have introduced specific rules or case law to address platform work, while others, like the United States, continue to navigate varying approaches. Companies must carefully assess their working relationships, implement preventive measures, and stay informed of legal developments to ensure compliance and mitigate risks in this rapidly changing landscape. Please check out our thought leadership on a variety of labor and employment topics HERE. If you have any questions, feel free to reach out to any of the authors of this article.

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References

1. Such as severance payment in case of termination of employment without cause and the minimum statutory rights provided by the FLL (i.e. Christmas bonus, vacation, vacation premium, overtime, profit sharing, registration with the Mexican Social Security Institute, social security contributions including contributions to the Mexican Housing Fund Institute, and contributions to the Nation Pension Fund System.
2. Eventually omissions to pay social security contributions and/or taxes could be

considered tax fraud.

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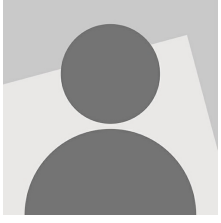

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