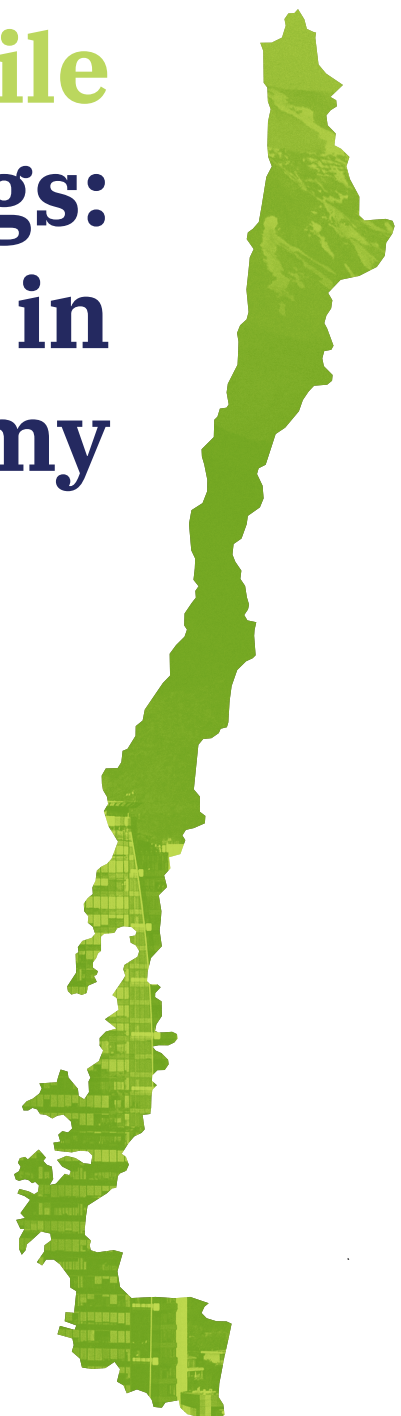




Fairwork Chile
2021 Ratings:
Labour Standards in
the Gig Economy



Executive Summary

Latin America has been at the centre of recent debates about the precarious and unfair conditions of workers in the platform economy. The Fairwork project is now present in five Latin American countries—Chile, Colombia, Ecuador, Argentina and Brazil. This report on Chile presents the second set of Fairwork ratings for the region, following the 2021 report on Ecuador. For this report, seven of the most prominent platforms in Chile—Uber, Uber Eats, Cabify, Rappi, Pedidos Ya, and DiDi—were evaluated against the five global principles of Fairwork.

The gig economy in Chile has been slowly consolidating, with early adoption of transportation apps (Uber and Cabify), followed by delivery for restaurants (Pedidos Ya, Rappi), and groceries (Cornershop, a Chilean-designed app that operates internationally and was recently acquired by Uber). The economic effects of the COVID-19 pandemic in Chile have encouraged thousands of formal workers to join the gig economy. Demand from consumers has also increased, with many businesses, especially restaurants, having to close their doors during the pandemic. At the time of writing, there are approximately 15,000 app delivery drivers and 200,000 ride-hailers in Chile. However, there are no reliable statistics to measure the size of this market. This report invites local authorities, such as the National Statistics Institute-INE, to include the gig economy labor force in the country's official employment measures, to have certainty of the size of this market.

The growth of digital work platforms has been highly favoured by structural conditions in Chile: a liberal economic history, high internet penetration, and a significant flow of migrant labour. Since the turn of the century, Chile has enjoyed one of the highest levels of internet penetration in Latin America. This has favoured the rise of the gig economy, with more jobs, flexibility and independence. Notwithstanding, the

promise of managing your own time, at your own pace, and being your own boss — presented as an advantage to workers — gig work also brings with it various forms of precariousness, exhausting shifts, exposure to risks, and few labour protections. Users, for their part, may not see or understand these risks clearly, since they value the convenience, speed, and low prices of these platforms.

In this context, the public agenda has begun to focus on the precarious working conditions faced by gig workers, including the unequal access to safety and health protection tools during the pandemic, and the lack of financial compensation when workers were unable to work. The Chilean case is no exception. This report explores the working conditions in the local gig economy to contribute to improving the standards for those who participate in this market.

The legal status of gig workers, the relationship between worker and platform, and the inadequacy of current regulations is currently the subject of debate among legal practitioners and political actors in Chile. By blurring the distinction between independent and subordinate work, gig work creates tensions with traditional legal frameworks, and the legal system has been forced to question the tools at its disposal. There are currently at least three legislative bills looking to

regulate these applications and grant rights to gig workers—a need that has become especially pressing in the context of the pandemic, which has exposed gig workers to new risks.

In Chile, as in many other countries, the pandemic has deepened existing inequalities, especially for women and migrants, who suffer greater vulnerabilities. Moreover, the economic recession, with the associated loss of work and salary cuts, has forced migrant workers to work more hours on the platforms, especially given their uncertain (or worse, undocumented) immigration status, and lack of access to public health coverage, often due to a fear of being deported. Although worsening economic conditions are of concern to platforms, they are a real threat to workers, who bear most of the risks of the work. The asymmetry of risk between workers and the platform has been exacerbated during the pandemic; it is, therefore, crucial that Chile's government further regulates this market to guarantee fair labour conditions and basic protections for gig workers.

Overall, our ratings reflect that there is much to be done to ensure fairness in Chile's emerging platform economy. The results demonstrate the need to gather more, and increase the transparency of, information on this market - its functions, its size, the income generated by its workers,

and the labour trajectories of those who are part of it. Our findings call for urgent regulation that fits the size and relevance of this burgeoning market, and that addresses its particularities. We call on regulators, platforms, workers, and consumers to use this information to rethink the organization and functioning of this market. This is especially relevant in the context of the COVID-19 pandemic, where unemployment and the economic needs of millions of workers demands a re-imagining of a fairer gig economy for everyone.

This report is the result of a one-year pilot project in Chile. It establishes a baseline on the current situation of the country's platform economy that will be updated on a yearly basis. By raising awareness of the conditions of gig workers in Chile and across Latin America, Fairwork aims to assist workers, consumers and regulators in making platforms accountable for their practices.

Key findings

- ▲ The ratings achieved by the platforms operating in Chile are very low, with no platform scoring more than two points out of ten. Uber, Cornershop, Cabify, Pedidos Ya, and Uber Eats all scored two points, Rappi and DiDi scored one.
- ▲ **Fair Pay:** Workers were found to earn above the local minimum wage (in Chile, \$326,500 pesos for a 45-hour workweek) before costs are considered. However, none of the platforms was able to evidence that they pay a fair wage after accounting for workers' expenses, such as gasoline, and depreciation of the car, motorcycle or bicycle.
- ▲ **Fair Conditions:** No platform was able to provide evidence of concrete and consistent policies aimed at protecting workers from any task-specific risks. Although all seven of the platforms we analyzed implemented measures from the beginning of the pandemic (such as the provision of masks and gel), only four were found to provide some form of financial support in cases where workers contracted the disease. Greater efforts are required in this area to match the risks faced by delivery workers and drivers in the course of their work.
- ▲ **Fair contracts:** All agreements classify workers as independent contractors, either through an explicit clause on their contract (which normally includes a statement denying any type of regulation by labour law) or through the general framing of the clauses drafted. As a general rule, the contracts or terms and conditions drafted by the companies were found to be easily accessible to workers, both in terms of terminology and language, even though certain clauses were drafted in technical legal language. However, with the exception of one company (Cornershop), we could not find any instance in which platforms cannot unilaterally make changes to their terms, with differences regarding the manner of notifying and enforcing such changes.
- ▲ **Fair management:** Only three of the seven platforms could be evidenced to have clear communication channels with their workers, through the chat or other communication systems in the applications themselves. There is no fluid and direct contact with managers or executives, and in most of the platforms, once workers are deactivated from the platform, they cannot appeal a decision. We could not find any information on the use of data and personal information of workers by the platforms.
- ▲ **Fair Representation:** The principle of fair representation was not achieved by any of the platforms we analyzed. None of them was found to recognize or facilitate the existence

of workers' organizations to generate agreements and review existing working conditions. While there are associations of ride-hailing drivers and delivery riders, they are not formally recognized by the platforms. This leaves gig workers in Chile without mechanisms of formal representation or opportunities to either cooperate with each other or to influence decisions that impact the process of work.

Fairwork Chile 2021 Scores*

Cabify	2
Cornershop	2
Pedidos Ya	2
Uber	2
Uber Eats	2
Didi	1
Rappi	1

* Scores are out of 10.

Editorial:

Why study the gig economy in Chile? An introduction to the Fairwork project

Among its many consequences, the COVID-19 pandemic has reinforced our relationships with digital technologies, at the same time forcing a change in our habits and forms of consumption from supermarkets, restaurants, and clothing stores. In this process of change, delivery and digital gig workers have been fundamental in consolidating an emerging market for goods and services mediated and organized by digital applications—namely the “gig” economy.

The gig economy is a labor market characterized by worker independence, where the supply of and demand for labor is organized through a digital algorithmic infrastructure. There is a “labor–capital” relationship between worker and digital platform: the latter mediates the supply of labor and the demand for professional services, operating as an intermediary, or “ghost employer”.¹ Indeed, there are tens of millions of people globally who work in the gig economy.² Global applications like Uber have become a source of work for those who have been left out of the traditional formal labor market.³ However, contrary to the promises disclosed by economists and management experts regarding the possibilities of labor flexibility,⁴ recent sociology and economic geography studies in the US and UK have warned of increasing precariousness and

fragmentation of work, where different costs are being transferred from company to worker.⁵

The gig economy in Chile has been slowly consolidating, with early adoption through transportation apps (Uber and Cabify), followed by delivery for restaurants (Pedidos Ya, Rappi) and groceries (Cornershop, a Chilean-designed app that operates internationally and was recently acquired by Uber). The economic effects of the pandemic in Chile has encouraged thousands of formal market workers to integrate into the gig economy. According to the National Institute of Statistics (INE), unemployment reached 13% for May – July 2020 and 10% for November–January (2020–2021) (INE, 2021). At the same time, a recent media article titled as “historic” the increase in the number of delivery workers, reaching

20% in the case of Pedidos Ya, and 78% in the case of Cabify (Bohle, 2020). Demand from consumers has also increased, with many businesses, especially restaurants, having to close their doors during the pandemic. At the time of writing, there are approximately 15,000 app delivery drivers and 200,000 ride-hailers in Chile (Bohle, 2020; Comisión Nacional de Productividad, 2019).

In this context, the public agenda has begun to focus on the precarious working conditions faced by gig workers, including unequal access to safety and health protection tools during the pandemic, and a lack of financial compensation when unable to work. The Chilean case is no exception. This report explores gig economy working conditions in order to contribute to improved standards for those who participate in this market.

Alongside reports from India and South Africa (2019, 2020), Germany (2020), Ecuador (2021) and the UK (2021) the Fairwork project is beginning to conduct South American country case studies in Argentina, Brazil, Colombia, and Chile. The School of Communications and Journalism at the Universidad Adolfo Ibáñez has worked with the Oxford Internet Institute (University of Oxford) and the University of Cape Town to implement the Fairwork methodology in order to assess working conditions in the Chilean gig economy and make suggestions for improvement.

The analysis presented in this report is based on five basic principles of fair work in the gig economy: fair pay, fair conditions, fair contracts, fair management, and fair representation. Each principle is divided into two sub-principles, which together total ten points. We award one point when we find that basic conditions are met and an extra point when more advanced standards are achieved. The first two principles refer to whether workers receive fair pay for their work and whether their jobs are characterized by healthy and safe working conditions. The second three focus on whether the platform has engaged in fair contractual agreements with workers; whether workers are aware of these conditions; whether there are transparent management processes and communication channels between the parties; and whether workers are able to express their demands collectively through different representation mechanisms.

The evidence we gathered included desk research, interviews with workers in Chile, a workshop with different actors in the gig economy (platform representatives, workers, and policymakers), and semi-structured interviews with platform managers. We recognize that it is difficult to obtain reliable information due to the dynamic nature of this economy, and the confidentiality of the data. Therefore, we only award a point when there is clear and sufficient evidence to support the fulfillment of a principle. In other words, our research strategy does not

depend on the willingness of platforms to participate.

The results demonstrate the need to gather and increase transparency of information on this market and its functions, its size, the income generated by its workers, and the labor trajectories of those who are part of it. Our findings call for urgent regulation that fits the size and relevance of this burgeoning market, and that addresses its particularities. We call on regulators, platforms, workers, and consumers to use this information to rethink the organization and functioning of this market. This is especially so in the context of the COVID-19 pandemic, where unemployment and the economic needs of millions of workers require a re-imagining for a fairer gig economy for everyone.



“At the time of writing, there are approximately 15,000 app delivery drivers and 200,000 ride-hailers in Chile.”

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The Fairwork Framework

The Fairwork project evaluates the working conditions of digital platforms and ranks them on how well they do. Ultimately, our goal is to show that better, and fairer jobs are possible in the platform economy.

To do this, we use Fairwork's five principles that digital platforms should comply with in order to be considered to be offering 'fair work'. We score platforms against these principles to show what the platform economy is, and what it could be. The five Fairwork principles were developed in multistakeholder workshops at the International Labour Organisation. To ensure that these global principles were applicable in the Chilean context, we then revised and fine-tuned the criteria for measuring these in consultation with platforms, trade unions, regulators, academics, and labour lawyers in Santiago.

Further details on each principle's thresholds, and the criteria used to assess the collected evidence to score platforms, can be found in Appendix I.

01 The five principles



Fair Pay

Workers, irrespective of their employment classification, should earn the mandated minimum wage in their home jurisdiction after taking account of work-related costs.



Fair Conditions

Platforms should have policies in place to protect workers from risks arising from the processes of work, and should take proactive measures to protect and promote the health and safety of workers.



Fair Contracts

Terms and conditions should be accessible, readable and comprehensible. The party contracting with the worker must be subject to local law and must be identified in the contract. If workers are genuinely self-employed, the terms of service must be free of clauses which unreasonably exclude liability on the part of the platform.



Fair Management

There should be a documented process through which workers can be heard, can appeal decisions affecting them, and be informed of the reasons behind those decisions. There must be a clear channel of communication to workers involving the ability to appeal management decisions or deactivation. The use of algorithms must be transparent and result in equitable outcomes for workers. There should be an identifiable and documented policy to ensure equity in management of workers on a platform (for example, in the hiring, disciplining, or firing of workers).



Fair Representation

Platforms should provide a documented process through which worker voice can be expressed. Irrespective of their employment classification, workers should have the right to organise in collective bodies, and platforms should be prepared to cooperate and negotiate with them.

02 Methodology

The Fairwork project uses three approaches to effectively measure fairness at work.

Desk Research

The process starts with desk research to ascertain which platforms are operating in each city, as well as noting the largest and most influential ones. This research provides the overall range of the platforms that are ranked, as well as identifying points of contact or ways to access workers. Desk research also flags any public information that could be used to score particular platforms, for instance the provision of particular services to workers, or ongoing disputes.

Platform Interviews

The second method involves approaching platforms for evidence. We interview platform managers and request evidence for each of the Fairwork principles. This provides insights into the operation and business model of the platform, while also opens a dialogue through which the platform could agree to implement changes based on the principles. In cases where platform managers do not agree to be interviewed, we limit our scoring strategy to evidence obtained through desk research and worker interviews.

Worker Interviews

The third method is interviewing platform workers directly. We aim for a

sample of 6-10 workers interviews for each platform. Workers are approached either through the platform directly or at known worker meeting points. These interviews do not aim to build a representative sample. They instead seek to understand the process of work and the ways it is carried out and managed. They allow us, for instance, to see contracts and learn about platform policies that pertain to workers. The interviews also allow the team to confirm or refute that policies or practices are really in place on the platform.

Putting it all together

This threefold approach provides a way to cross-check the claims made by platforms, while also providing the opportunity to collect evidence from multiple sources. Final scores are collectively decided by the Fairwork team based on all three forms of evidence. The scores are peer-reviewed by the country team, the Oxford team, and two reviewers from other Fairwork country teams. This provides consistency and rigour to the scoring process. Points are only awarded if clear evidence exists for each threshold.

03 How we score

Each Fairwork principle is broken down into two points: a basic point and a more advanced point that can only be awarded if the basic point has been fulfilled. Every platform receives a score out of 10. Platforms are only given a point when they can satisfactorily demonstrate their implementation of the principles.

Failing to achieve a point does not necessarily mean that a platform does not comply with the principle in question; it simply means that we were unable to evidence its compliance.

See Appendix I for further details on the Fairwork scoring system.

Overview of the gig economy in Chile



The growth of digital work platforms has been highly favored by structural conditions in Chile: a liberal economic history, high internet penetration, and a significant flow of migrant labor. In the following section, we will review some of these factors and the development of the gig economy in the country.

Chile: favorable conditions for the gig economy

Chile underwent a drastic process of economic liberalization during its military dictatorship in the 1980s, under the guidance of a group of young neoliberal economists. Although still debated, these policies were at least partially responsible for the economic boom following the return of democracy in the 1990s. At that time, Chile saw an average GDP growth of over 5% and an increase in access to credit, with a significant reduction in poverty from 38% in 1990 to 18.8% in 2003.⁶

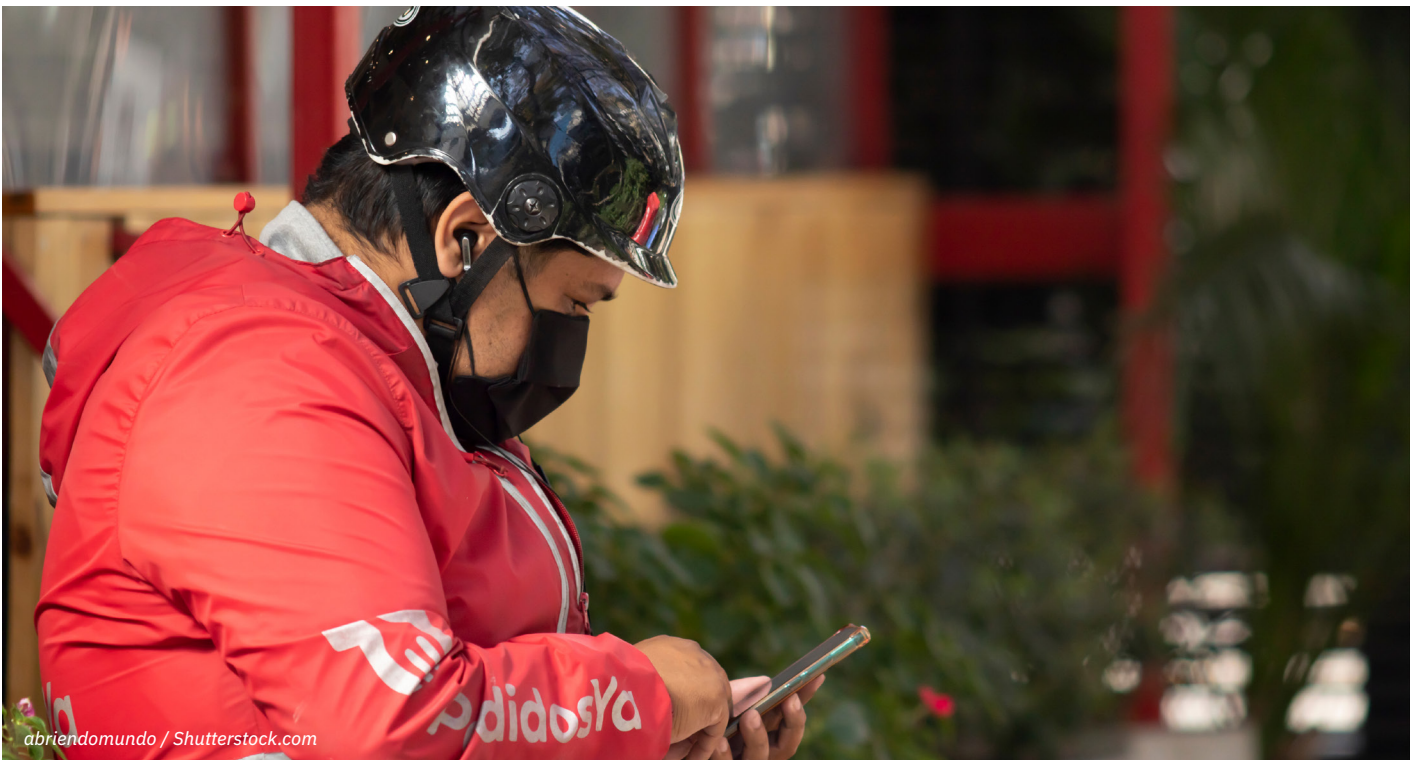
Since the turn of the century, Chile has had one of the highest levels of internet penetration in Latin America. Where in 2009 the penetration rate was 13.7 internet connections per 100 inhabitants, by 2019 this had increased to 116.1 connections, with

smartphones and mobile devices accounting for 84.7% of these.⁷ As of June 2019, there were more than 25 million active cell phones in the country, with 4G connections growing more than 20% compared to the same period of 2018.⁸ Similarly, the population has avidly incorporated new platforms and social media into their daily lives. In 2008, Chile had the most Fotolog accounts worldwide, at 4.8 million; and that same year created more than 4 million new profiles on Facebook.⁹ This context has contributed to building the necessary devices and user infrastructure for a digital platform market.

This has favored the rise of the gig economy, with more jobs, flexibility and independence. Notwithstanding, the promise of managing your own time, at your own pace, and being your own boss—presented as an advantage to workers—also brings with it various forms of precariousness, exhausting shifts, exposure to risky situations, and

few guarantees from the applications. Users, for their part, do not see these risks clearly, since they value the convenience, speed, and low prices of these platforms.

One of the first major platforms in Chile was parcel and delivery application Pedidos Ya, present since 2010. While a number of different transportation and delivery applications gradually entered the market, it was not until the arrival of Uber in 2014 that the gig economy saw significant growth, with Uber alone accounting for more than 70,000 “driver partners” and two million registered users by 2018. By that same year, there were a total of 200,000 drivers working for various transportation platforms.¹⁰ We include in our research also a number of delivery platforms, including Cornershop, a Chilean–Swedish development company founded in 2015, which found its niche in the parcel market, especially supermarket shopping. The true reach of these new



platforms is difficult to pinpoint, due to the difficulty of obtaining data from the companies behind the apps.

In our research, we examined the experience of workers for Uber, Cabify, DiDi, UberEats, Rappi, Pedidos Ya, and Cornershop. While these seven apps are among the most prominent, there are other apps operating in Chile which may share similar working conditions and day-to-day problems.

Demands for greater regulation

A large part of the Chilean gig workforce is vulnerable, and tensions between different social groups—for example, local cab drivers intimidating transportation gig workers—are exacerbated by a number of factors, including the lack of regulation for platforms, the delay in discussions on the matter, and its effects on the labor market.

Demands for greater regulation have come from competing sectors. For instance, license fees, tariffs and conditions for taxis are determined by the Ministry of Transportation and Communication, while platforms have

their own set of rules and qualifications for their drivers, some of them laxer. There is a perceived uneven field with formal workers, especially in the urban transport sector, where taxi drivers have been vocal in manifesting their discomfort to the point of intimidating or threatening local platform drivers. Demand for more regulation has also come from the gig workers themselves, especially those in the delivery sector, who have gathered with their bicycles and backpacks to visibly protest the precarious situations and risks they take,¹¹ even though demonstrations have cost many their jobs in retaliation by the companies.

There are currently at least three bills looking to regulate these applications and grant rights to gig workers—a need which has become especially pressing in the context of the pandemic, during which gig workers are exposed to new risks.

COVID-19: New conditions and risks

The economy has been shaken by the coronavirus and the restrictions it imposes, putting several companies and the jobs of thousands of people



“The promise of managing your own time, at your own pace, and being your own boss—presented as an advantage to workers—also brings with it various forms of precariousness, exhausting shifts, exposure to risky situations, and few guarantees from the applications.”

at risk. According to data from a longitudinal study by the Pontificia Universidad Católica de Chile,¹² July 2020 saw a drop in employment, from 58.2% to 42.4%, compared to the previous year. During this dire time, urban mobility platforms like Uber or Cabify have had to curtail operations during the most stringent stages of confinement. This intermittent activity has had economic consequences and leaves workers uncertain about their futures. Meanwhile, delivery platforms have provided displaced workers the possibility for extra income, and for their users the access to some goods and services otherwise restricted by the stricter lockdown stages.

Already exposed to the dangers of theft and accidents, workers are now further at risk of COVID-19 infection as they go about their work. In response, some platforms have offered to cover the cost of disinfectant gel and face masks. Despite these new challenges, the new surge in demand has seen platforms saturated with new workers, many of whom are transfers from the formal economy.



The Legal Context

The legal position of gig work, the relationship between worker and platform, and the inadequacy of current regulations is currently the subject of debate among legal practitioners and political actors in Chile. By blurring the distinction between independent and subordinate work, gig work creates tensions with traditional legal frameworks, and the legal system has been forced to question the tools at its disposal.

Chile's labor legislation is built around a binary notion of employment, with workers being classed as either employees or independent contractors. The former are those who provide personal services to an employer under subordination and dependence (article 3 (b) of the Chilean Labor Code). The legal concept of an employment agreement (article 7)¹³—developed by decades of jurisprudence—represents a dividing line for those who are protected under legislation. Traditionally, subordination is the employee's subjection to employer control, while dependence is related to a person's ability to provide for their own livelihood. A worker needs to be subjected to both in order to be considered an employee. Courts have developed a series of indices (i.e., company uniform, clocking in, disciplinary measures for company procedures) to assess complex cases. However, they tend to work best with "standard" forms of employment.

The legal system is thus struggling to provide adequate solutions to the debates mentioned above. Platform companies classify workers as independent contractors—as in most countries where they operate—and have often defended this position both in courts and public discourse.¹⁴ Contractual arrangements reflect this, sometimes explicitly in the Terms and Conditions.

Until 2020, there had been hardly

any legal challenges to the platforms' position—with only one lawsuit by an Uber driver, which was rejected by a lower labor court. However, things have changed after several worker organizations engaged in strikes and campaigns, and especially given the market effects of the COVID-19 pandemic. The Riders Unidos Ya organization presented two prominent lawsuits against PedidosYa, arguing that some members had been dismissed for organizing. These claims asked the courts to declare them employees (and thus provide them legal protections). Both cases are currently being litigated before labor courts in Santiago.

However, the first judicial decision reclassifying a gig worker as an employee came in an apparently minor case decided by a labor court in the city of Concepción. In the judge's ruling, the conditions under which the services were performed amounted to subordination and dependence; citing elements like the existence of shifts, performance rankings, and the use of GPS, among others, to conclude that subordination and dependence were present in the situation of the rider. On January 15, 2021, the Court of Appeals of Concepción upheld the lower court's decision, agreeing with the original decision brief, particularly that the criteria traditionally used by courts to identify an employment relationship does—and should be further adapted to—address new forms of economic

organization. Due to the low monetary value of the worker's claims, this case has almost no possibility of review by the Supreme Court. Finally, PedidosYa has been recently fined by the Labor Inspectorate after one of its riders suffered an accident in the city of Puerto Montt.¹⁵ Since the fine presumes that the rider is an employee,



“Platform companies classify workers as independent contractors—as in most countries where they operate—and have often defended this position both in courts and public discourse.”

the company has announced that it will challenge the fine in the courts. On May 17, 2021, a Labour Court in Santiago decided that a group of riders form Pedidos Ya were not employees but independent contractors, citing the lack of fixed working hours and the existence of flexible agreements between the parties as reasons to reject the suggestion that they worked under subordination and dependence. This decision will probably be the subject of an appeal.

The use of the existing legal provisions to identify a gig worker as an employee raises the question: will new legislation be required to regulate gig work? Legislators have attempted to confront these issues, and there are at least three major bills under discussion that relate to specific labor problems. A group of deputies have sought to create a special regulation (bulletin N°12475-13) for gig workers within Chile's Labor Code, recognizing them as employees, thus applying the entire set of rights and protections afforded to employees, and providing special norms for specific issues like working time and data protection, among others. The bill was approved by the Chamber of Deputies and is now under discussion in the Senate. Another labor reform package presented in 2019 (bulletin N°12618-13) proposes to classify gig workers as independent contractors while recognizing certain rights in matters like social security. Controversially, the criteria used by the bill to establish the independent nature of the relationship could, in practice, turn the criteria developed by courts on its head.¹⁶

Finally, another bill (bulletin N° 13496-13) looks to create protections for gig workers, but does not address the nature of the contractual arrangements.¹⁷ This bill was introduced by a group of senators in may 2020, and it led to the creation of a report, presented in October 2020, by a working group of senators, government officials, and academics,¹⁸ which sketched a series of proposals for matters like social security and data protection, working time, and other working conditions.¹⁹ They did not reach an agreement on the nature

of the relationship between platform and worker, however. This work is the basis of an agreement reached by the government and the senators in the Work and Pensions Committee, which led to the initial approval of a new version of the bill creating a hybrid scheme distinguishing dependent and independent gig workers. It sets a series of rights for each category (in matters like working time and data protection, among others) and certain common rights in issues like the right to organize and collective bargaining (without the full protection afforded to other workers). This bill was recently approved by the Senate and is currently under discussion in the Chamber of Deputies. The government supports the bill, and it has used its constitutional power to give priority to its discussion.²⁰

Beyond labor law, a bill regulating transportation services through platforms (bulletin N° 11934-15) is now in the final stages of the legislative process. It creates a series of rights for users, and a regulatory framework on matters like vetting and registering drivers and tariff settings.

Fairwork Scores

Score (out of 10)*

Cabify	2
Cornershop	2
Pedidos Ya	2
Uber	2
Uber Eats	2
Didi	1
Rappi	1

* The breakdown of scores for individual platforms can be seen at: www.fair.work/ratings

All platforms in Chile for the year 2021 score very low on Fairwork principles, none of them achieving more than a 2 out of 10 in the league table. These results show that very few principles of fairness could be evidenced in jobs offered by digital platforms in Chile, including access to a number of basic rights and entitlements. Our results highlight the very long way to go before a fair gig economy is seen in Chile.



Fair Pay

Through the evidence gathered, and because of the relatively high-cost base of most platforms, it could be evidenced that workers earn above the local minimum wage (in Chile, \$326,500 pesos for a 45-hour work week) before costs are considered. However, none of the platforms were able to evidence that they pay a fair wage after accounting for workers' expenses, such as gasoline, and depreciation of the car, motorcycle or bicycle.



Fair conditions

No platform was able to provide evidence of concrete and consistent policies aimed at protecting workers from any type of risk in the performance of their activities. There are policies providing accident insurance, although the seven platforms we analyzed implemented measures from the beginning of the pandemic (such as the provision of masks and gel), only four were found to provide some form of financial support in cases where workers contracted the disease. We could not find evidence that these measures were consistent and broadly reached all workers. Greater and better efforts are required in this area, consistent with the risks

faced by delivery workers and drivers in the performance of their work.



Fair Contracts

As a general rule, the contracts or terms and conditions drafted by the companies were found to be easily accessible to workers, both in terms of terminology and language, even though certain clauses drafted in technical legal language. However, with the exception of one company (Cornershop), we could not find any instance in which platforms cannot unilaterally make changes to their terms, with differences regarding the manner of notifying and enforcing such changes. Also, all agreements classify workers as independent contractors, either through an explicit clause (which normally includes a statement denying any type of regulation by labor law) or through the general framing of the clauses drafted.



Fair management

Only three out of a total of seven platforms could be evidenced to have clear communication channels with their workers, through the chat or other communication systems in the applications themselves. There is no fluid and direct contact with managers or executives and in most of the platforms, once workers are deactivated from the platform, they cannot appeal a decision. No platform was found to have defined policies of equity towards its workers, which would guarantee, for example, that some workers are not benefited over others, for example, when receiving requests or orders. We could not find any information on the use of data and personal information of workers by the platforms. The role

played by algorithms and the secrecy surrounding their operation makes it difficult for workers to have concrete information on the existence of non-discriminatory policies.



Fair Representation

The principle of fair representation was not achieved by any of the platforms we analyzed. None of them was found to recognize or facilitate the existence of workers' organizations in order to generate agreements and review existing working conditions. Although there are associations of app drivers (Acua Chile, for example) and delivery drivers (Riders Unidos Ya Chile), they are not formally recognized by the platforms. This leaves gig workers in Chile without formal representation mechanisms or instances to either cooperate with each other or to influence decisions that impact the process of work.

Platform in Focus: Cornershop

				Total
	Principle 1: Fair Pay	 Pays at least the local minimum wage	 Pays the local minimum wage plus costs	
	Principle 2: Fair Conditions	 Mitigates task-specific risks	 Actively improves working conditions	
	Principle 3: Fair Contracts	 Clear terms and conditions are available	 The contract genuinely reflects the nature of the employment relationship	
	Principle 4: Fair Management	 Provides due process for decisions affecting workers	 There is equity in the management process	
	Principle 5: Fair Representation	 Includes freedom of association and worker voice mechanism	 There is a collective body of workers that is recognised, and that can undertake collective representation/bargaining	

Cornershop's overall score

 **02/10**

All platforms in the 2021 Chile league table achieve a very low score, making it impossible to evidence any example of best practice. Despite these limitations, we want to present here a platform which, although achieving a score of only 2/10, has implemented a number of working practices which contain the seeds of a potentially fairer working model, bearing in mind that much more still needs to be done to consider the work fair. Cornershop is a Chilean digital platform (recently acquired by Uber), which emerged in 2015 in Santiago and Mexico City to offer delivery services for supermarket shopping.

For the Cornershop workers interviewed, called “shoppers”, the contract is accessible, simple, written in clear language. While other companies operate through looser agreements based on standardized terms and conditions that must be

accepted through the app, Cornershop offers its shoppers a fee-based agreement which they must sign in person. As expected, Cornershop's contracts are built on the assumption that the shoppers are independent contractors and state that labour law is not applicable. Unlike other platforms, however, Cornershop asks their shoppers to generate a fee slip in accordance with tax law. The contract, however, does not specify any regulations regarding the company's rates and payments. Cornershop pays its workers according to the deliveries they make through a payment method that considers each product, its weight and the distance traveled. Therefore, the larger the user's order and the greater the delivery distance, the higher the earnings; with workers usually earning above the minimum wage after costs. Its communication channel is mostly focused on solving users' problems rather than

workers' and (like other platforms) does not allow for appeals in case of deactivation.

Workers' Stories



Raúl

Uber Driver

Raúl* has a well-calibrated working routine. He starts his shift as an Uber driver partner in the morning, taking a snack with him. He returns home at noon to rest and have lunch. He keeps several items in his car that make it easier for him to stay out during the long day: a special cover for his seat, a small trash can, and an air freshener he likes. After lunch, he rests for a while longer and goes back to drive until curfew. Raul has been working for Uber almost since it started operating in Chile. He has done more than 10,000 trips and has an excellent rating (above 4.95), which he says has brought him benefits: “being an outstanding driver, I get special attention. If I check into the offices, to consult something, they help me right away. I don’t have to wait in line.”

There are some factors beyond his control that keep him permanently vigilant: he has been involved in several traffic accidents; the inspectors have taken away his car a couple of times; and he recently suffered an armed robbery by two passengers, stealing his car and leaving him in an abandoned spot. Although he received help when his car was towed, he was unable to do anything about the robbery: his private insurance does not cover a work vehicle

and Uber did not offer a reimbursement. This meant he had to stop working and later he had to get into debt to buy another car to resume his activities and provide for his family. On weekends, his routine is a bit tougher, as he extends into the night as long as curfew allows. He used to work all night, arriving home early in the morning to sleep and rest during the day, to continue again at night.

He previously had other sporadic jobs, even working abroad for years. Here in Chile, Uber appeared to be a stable job opportunity. He does recognize certain risks, but he is willing to take them in order to have a steady income and ensure some stability when he decides to retire. He is zealous in his work and is not interested in socializing or organizing with other drivers regarding work issues. He prefers not to be part of the WhatsApp or Facebook groups, and rather concentrates on his work.

*Names have been changed to protect workers' identities.





Yenifer

Uber Eats

Rider

Yenifer* is Venezuelan, with a technical education background. She lives with her husband, also Venezuelan, and their young son in downtown Santiago. Both work for Uber Eats, where they distribute their schedules so that one can take care of their young son at home. Because of this, they are comfortable working for delivery platforms, and she considers them a good job opportunity: “Some take it as a formal job, because that’s what they get, because of the schedule. There is no contract. There is no obligation to work hours or location. Wherever you are, you connect.” When joining the platform, she didn’t check the terms and conditions thoroughly, but, as a migrant in Chile, she didn’t have much choice and agreed to them because she needed to work.

Both her and her husband have connected with other migrant workers who also live in downtown Santiago. Together, they cycle to the eastern sector of the capital, where most of the upper-income households live, and where there is greater demand throughout the day. The platform does not provide any sort of protective gear for these long rides besides the reflecting material in her backpack, which she had to pay for. Riding in a group calms her down, especially on the way back at night, when there is more risk of accidents or possible assaults. She comments that she has had situations where a punctured tire has left her adrift at night, in the middle of an order, so this group of acquaintances can also offer help. Besides these migrant networks, she isn’t really involved in any other workers group or union, and she is not aware of any form of organization recognized by the platform.

While she is grateful for the economic opportunity that allows her to work for Uber Eats, she would like to have more guarantees

and backups for herself and her coworkers. She mentions that in some instances, it seems that the customers have greater credibility or priority than the workers do, which she shows with a personal story: “It was 1:30 in the morning and I had an order of 4 km and at 1.5 km the tire went flat. They told me I had two options: either cancel the order or make the delivery on foot. I told him if I cancel it, I will have a debt for the order. He told me that nothing was going to be charged and I canceled—two days later, they charged me for the order.” She also mentions that the payment isn’t worth it for long distances in bicycle and there’s no way to know how far she has to ride before taking the order. If she cancels some of these long deliveries, she might suffer shadow sanctions, losing visibility for orders via the platform.

Sometimes the app assigns her very long distance orders, which are not financially convenient; however, if she cancels orders, even with a fair reason, her visibility on the platform decreases, as does her supply of orders. These long distances are not easy, so she ends up very tired and suffers from a slight pain in her knee, possibly due to the incessant pedaling. Despite bad experiences with the support system and not having some insurances from the platform, she continues to work, relying on her fellow countrymates to compensate for these drawbacks in her daily routine.

*Names have been changed to protect workers’ identities.

Theme in Focus:

The other front-line: COVID-19 and gig workers in Chile

While workers face the risk of contracting COVID-19 in order to provide basic supplies to the rest of the population, platforms have failed to establish effective health or financial protection measures. The precariousness of gig workers, despite workers having become essential during periods of lockdown, has increased: Fairwork reports indicate that about half of gig workers worldwide have lost their jobs, and the remaining have lost two-thirds of their average income.²¹

Gig work presents a challenge to social distancing. Gig workers have direct contact with supermarket and restaurant staff as well as final customers, and the risk of contracting the virus is thus extremely high. Many platforms have introduced preventive measures, including contact-free delivery and guidelines on how to deliver to users, such as maintaining a distance of two meters, and washing hands with alcohol gel. However, while the workers we spoke to reported that some platforms offered alcohol gel, they also reported that supplies often quickly ran out. Others complained about recent policies for reimbursing the costs of these safety items, such as gloves, alcohol-gel, masks, but platforms also stated this was optional and disavowed any responsibility.²²

Despite the risk, stopping taking orders is not an option because being

“inactive” threatens their scores, and consequently, their chances of receiving orders and generating income. Furthermore, for many, especially migrants, this is a primary or sole income, and they have no access to any form of income protection. In Chile, as in many other countries, the pandemic has thus deepened existing inequalities, especially for women and migrants, who suffer greater vulnerabilities.²³ Moreover, the economic recession, with the associated loss of work and salary cuts, has forced migrant workers to work more hours on the platforms, especially given their uncertain (or worse, undocumented) immigration status, and lack of access to public health coverage, often due to fear of being deported.

Among the platforms operating in Chile, none of them could evidence to provide

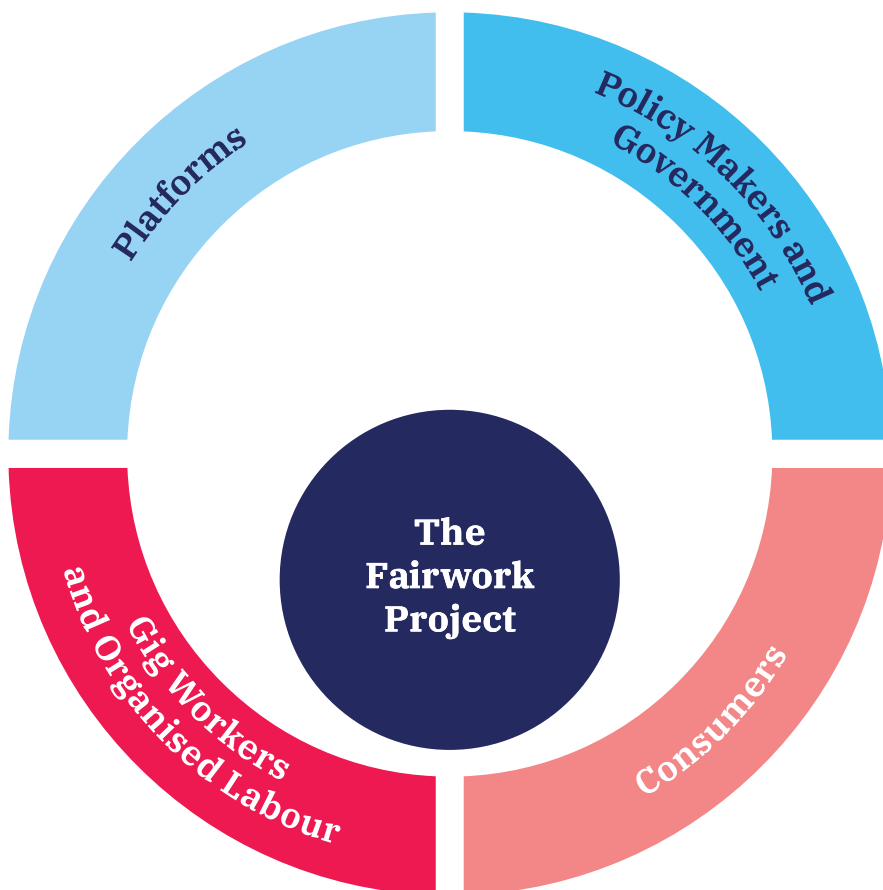
adequate protection. Since platforms rely on safety items that can prevent contagion,²⁴ conflict with workers has increased and many have begun to appeal for their rights, bringing cases to court to reclassify them as employees. Although worsening economic conditions are of concern to platforms, they are a real threat to workers, who bear most of the risks of the work. The asymmetry of risk between workers and the platform has been exacerbated during the pandemic; it is therefore crucial that Chile’s government further regulates this market to guarantee gig workers fair labor conditions and basic protections.

Impact and Next Steps

This report is the result of a one-year pilot project in Ecuador. We have established a baseline on the current situation of the country's platform economy that will let us study its development and update our ratings on an annual basis. As Fairwork's reach and visibility increases, we see four avenues for contributing to improvements in the conditions faced by Ecuadorian platform workers.

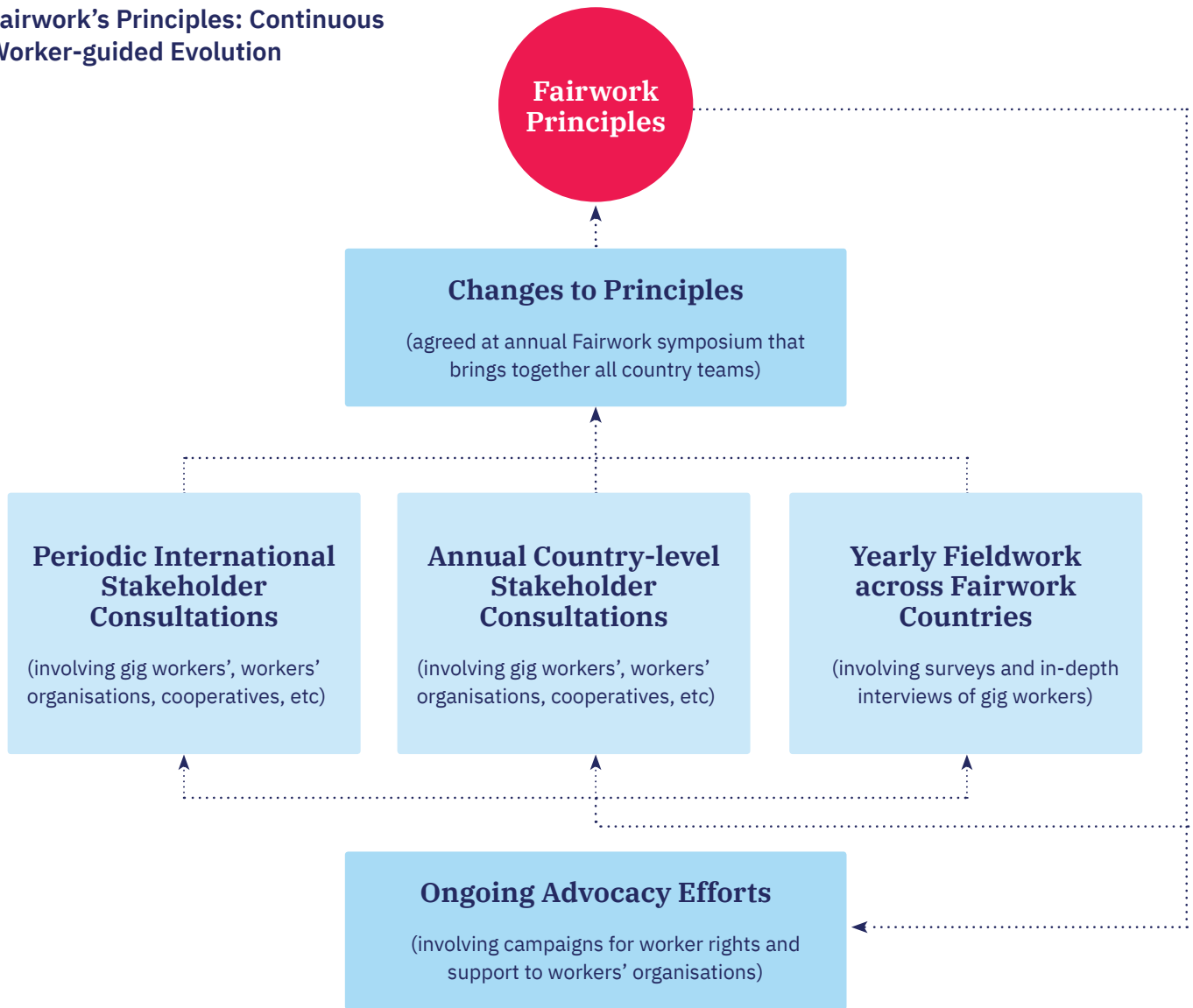
We hope this report will generate an opportunity to continue gathering information regarding the characteristics of the gig economy in Chile, the working conditions of those who make up this market, and the possibility of imagining a fairer gig economy for all workers. A good starting point would be to collect official information from the country's platforms and institutions in order to understand the size of this market and the income generated by the thousands of workers that make it up.

In the legal sphere, two initiatives will be of interest. On the judicial front, current litigation in Santiago's labor courts could provide important changes, considering the number of workers and the issues involved, including employment status, dismissals, collective representation and anti-union practices. It is expected that these cases will reach higher courts, providing more judicial outcomes to follow. Whether courts will follow the lead of the Court of Appeals in Concepción is yet to be seen. In the legislative field, the main discussion revolves around the preferred regulatory approach to the status of gig workers. Senators and the government are reported to be close to an agreement on a hybrid scheme that goes beyond the traditional binary employment approach. This new category intends to balance the demands for both flexibility and worker protection and may provide an adequate answer to the challenges we have outlined in this report. We should, however, look at this with a guarded optimism: there is a risk of creating a new set of less protected workers. A new category for "second-class" workers, may open the door to lowered labor standards, and more precarity and exploitation across different sectors.



Vías de cambio de Fairwork

Fairwork's Principles: Continuous Worker-guided Evolution



Appendix I:






Fairwork Scoring System

The five Principles of Fairwork were developed through an extensive literature review of published research on job quality, stakeholder meetings at UNCTAD and the ILO in Geneva (involving platform operators, policymakers, trade unions, and academics), and in-country stakeholder meetings held in India (Bangalore and Ahmedabad), South Africa (Cape Town and Johannesburg) and Germany (Berlin). This document explains the Fairwork Scoring System. Each Fairwork Principle is divided into two thresholds. Accordingly, for

each Principle, the scoring system allows one 'basic point' to be awarded corresponding to the first threshold, and an additional 'advanced point' to be awarded corresponding to the second threshold (see Table 1). The advanced point under each Principle can only be awarded if the basic point for that Principle has been awarded. The thresholds specify the evidence required for a platform to receive a given point. Where no verifiable evidence is available that meets a given threshold, the platform is not awarded that point.

A platform can therefore receive a maximum Fairwork Score of ten points. Fairwork scores are updated on a yearly basis.

Table 1 Fairwork Scoring System

Principle	Basic point		Advanced point		Total
 Fair Pay	1	+	1	=	2
 Fair Conditions	1	+	1	=	2
 Fair Contracts	1	+	1	=	2
 Fair Management	1	+	1	=	2
 Fair Representation	1	+	1	=	2

Maximum possible Fairwork Score





Principle 1: Fair Pay

Threshold 1.1 – Pays at least the local minimum wage (one point)

Irrespective of the employment status of the worker, workers earn at least a local minimum wage, or there is a policy which requires payment above this level.

The threshold for 1.1 is based on the level for a local minimum wage (400 USD).²⁵ Workers on the platform must earn more than the minimum wage rate in their working time,²⁶ and this can be evidenced by either:

- A policy that guarantees the workers receive at least the local minimum wage in their working time; or
- The provision of summary statistics of transaction data.

In the case of (b), the platform is asked to submit a weekly earnings table (see Table 2) that averages worker earnings and worker hours for any three-month period over the previous twelve

months.

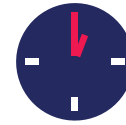
Threshold 1.2 – Pays the minimum wage plus costs (one additional point)

Workers earn at least the local minimum wage after work-related costs, or there is a policy which requires payment above this level.

The threshold for the minimum wage plus costs varies between different kinds of platform work. In order to establish a threshold, the platform is asked to provide an estimate for work-related costs, which are then checked (by the Fairwork team) through worker interviews.²⁹ To be awarded this point, there must be either:

- A policy that guarantees workers earn at least the local minimum wage plus costs; or
- Evidence from the platform that workers earn at least the local minimum wage plus costs.

If the platform has completed Table 2, the mean weekly earnings minus the estimated work-related costs must be above the local minimum wage (see Table 2 below).



Principle 2: Fair Conditions

Threshold 2.1 – Mitigates task-specific risks (one point)

There are policies to protect workers from risks that arise from the processes of work.

This threshold requires the platform to ensure that there are safe working conditions, and that potential harms are minimised.³⁰ For 2.1, this means identifying the task-specific risks for the worker when, for example, a vehicle is used, or there is interaction with customers. The specific practices leading to the awarding of this point may vary by the type of work and the risks involved.

To be awarded a point for 2.1, the platform must demonstrate that:

- There are policies or practices in place that protect workers' health and safety from task-specific risks

Threshold 2.2 – Actively improves working conditions (one additional point)

Table 2 Weekly earnings table

Weekly earnings	<X	X to (X+(X/2))	(X+(X/2)+1) ²⁷ to 2X	>2X
Active hours less than 40 hours/week (part-time)	%	%	%	%
Active hours between 40 and 48 hours/week (full-time)	%	%	%	%
Active hours more than 48 hours/week (full-time plus overtime)	%	%	%	%

Note: X = the local minimum wage, calculated at 45 hours per week. This row is filled out by the Fairwork team, before submitting it to the platform for completion.²⁸

There are proactive measures to protect and promote the health and safety of workers or improve working conditions.

For 2.2, the threshold is higher, involving practices that go beyond addressing the task-specific risks addressed by 2.1. This means a policy that goes beyond ameliorating the direct task-specific risks, by promoting greater health and safety or improvements in working conditions, beyond what is specified by local regulations for employment. For example, an insurance policy that covers workplace accidents would meet the threshold for 2.1, while one that also covers the worker or their family outside of work would meet 2.2. As policies and practices may be focused on the specific form of work, the examples that meet the threshold may vary by the type of work.

To be awarded a point for 2.2, the platform must demonstrate that:

- There is a documented policy (or policies) that promotes the health and safety of workers or improves working conditions, going beyond addressing task-specific risks



Principle 3: Fair Contracts

Threshold 3.1 – Clear terms and conditions are available (one point)

The terms and conditions are transparent, concise, and provided to workers in an accessible form.

The threshold for 3.1 involves demonstrating that the terms and conditions of the contract issued to workers are available in an accessible form.³¹ Platforms must demonstrate that the contracts are accessible for workers at all times, whether through the app itself or direct communication with the worker.

This is necessary for workers to understand the requirements of their work. The contracts should be easily understandable by workers, and available in the language/languages commonly spoken by the workers on the platform.

To be awarded a point for 3.1, the platform must demonstrate all of the following:

- The contract is written in clear and comprehensible language that the worker could be expected to understand; and,
- The contract is issued in the language/languages spoken by workers on the platform; and,
- The contract is available for workers to access at all times.

Threshold 3.2 – The contract genuinely reflects the nature of the employment relationship (one additional point)

The party contracting with the worker must be subject to local law and must be identified in the contract. If workers are genuinely self-employed, the terms of service are free of clauses which unreasonably exclude liability on the part of the platform.

The threshold for 3.2 involves the platforms demonstrating that the contract issued to workers accurately describes the relationship between the platform, the workers, and the users. In the case where there is an unresolved dispute over the nature of the employment relationship, a point will not be awarded.

If workers are genuinely self-employed,³² platforms must be able to demonstrate that the contract is free of clauses that unreasonably exclude liability on the part of the platform for harm caused to the workers in the course of carrying out their duties.

To be awarded a point for 3.2, the platform must demonstrate that:

- The employment status of the workers is accurately defined

in the contract issued by the platform; and,

- There is no unresolved dispute about the nature of the employment relationship; or,
- The self-employed status of the worker is adequately demonstrated and free from unreasonable clauses.



Principle 4: Fair Management

Threshold 4.1 – There is due process for decisions affecting workers (one point)

There is a documented process through which workers can be heard, can appeal decisions affecting them, and be informed of the reasons behind those decisions. There is a clear channel of communication to workers involving the ability to appeal management decisions or deactivation.

The threshold for 4.1 involves a platform demonstrating the existence of clearly defined processes for communication between workers and the platform. This includes access by workers to a platform representative, and the ability to discuss decisions made about the worker. Platforms must be able to evidence that information about the processes is also easily accessible to workers.

To be awarded a point for 4.1, the platform must demonstrate all of the following:

- The contract includes a documented channel for workers to communicate with a designated representative of the platform; and,
- The contract includes a documented process for workers to appeal disciplinary decisions or deactivations; and,
- The platform interface features

a channel for workers to communicate with the platform; and,

- The platform interface features a process for workers to appeal disciplinary decisions or deactivations; and,
- In the case of deactivations, the appeals process must be available to workers who no longer have access to the platform.

Threshold 4.2 – There is equity in the management process (one additional point)

There is evidence that the platform is actively seeking to prevent discrimination against workers from disadvantaged groups.

To be awarded a point for 4.2 the platform must demonstrate the following:

- It has a policy which guarantees that it will not discriminate against persons on the grounds of race, gender, sex, sexual orientation, gender identity, disability, religion or belief, age or any other status which is protected against discrimination in local law; and,
- Where persons from a disadvantaged group (such as women) are significantly under-represented among its workers, it has a plan to identify and remove barriers to access by persons from that group, resulting in improved representation; and
- It takes practical measures to promote equality of opportunity for workers from disadvantaged groups, including reasonable accommodation for pregnancy, disability, and religion or belief; and
- If algorithms are used to determine access to work or remuneration, these are transparent and do not result in inequitable outcomes for workers from historically or currently disadvantaged groups; and

- It has mechanisms to reduce the risk of users discriminating against any group of workers in accessing and carrying out work.



Principle 5: Fair Representation

Threshold 5.1 – There are worker voice mechanisms and freedom of association (one point)

There is a documented process through which worker voice can be expressed. There is no evidence of freedom of association being prevented by the platform. There is no evidence that platforms refuse to communicate with designated representatives of workers.

The first step for the justification of 5.1 is establishing the platform's attitude towards and engagement with workers' voice. This includes both listening to and responding to worker voice when raised with the platform, as well as documenting for workers the process for engaging the platform in dialogue. Workers should be able to organise and associate with one another, regardless of employment status. Workers must not suffer discrimination for doing so. This includes the freedom to associate beyond the remit of organisational spaces (for example, via instant messaging applications).³³

To be awarded a point for 5.1, a platform must demonstrate that:

- There is a documented process for the expression of worker voice.

Threshold 5.2 – There is a collective body of workers that is recognised, and that can undertake collective representation and bargaining (one additional point)

There is a collective body of workers that is publicly recognised and the

platform is prepared to cooperate with collective representation and bargaining (or publicly commits to recognise a collective body where none yet exists)

This threshold requires the platform to engage with, or be prepared to engage with, collective bodies of workers that could take part in collective representation or bargaining. The collective body must be independent of the platform. It may be an official trade union, or alternatively a network or association of workers. Where such organisations do not exist, the platform can sign a public statement to indicate that they support the formation of a collective body.

To be awarded a point for 5.2, the platform must:

- Publicly recognise an independent, collective body of workers or trade union and not have refused to participate in collective representation or bargaining;

If such a body does not exist, it must:

- Sign a public statement of its willingness to recognise a collective body of workers or trade union.

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A collaboration between:



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13. Article 7 defines an employment agreement as a contract 'by which the employer and the employee oblige themselves mutually, the latter to render personal services under the dependence and subordination of the former, and the former to pay for these services a certain remuneration'. De acuerdo a los datos presentados por el Centro de Encuestas y Estudios Longitudinales UC en Mayo de 2020, la tasa de desempleo a nivel nacional al 31 de Mayo alcanzó el 11,2%. Más información en: <http://www.encuestas.uc.cl/img/nuevas/Presentacion-Seminario-10jun.pdf>
14. This can be seen, for example, in their interventions during the legislative debate initiated after the introduction of the bills attempting to regulate the working conditions of the persons that provide services for them.
15. The enforcement report written by the Labour Inspectorate argues that there are enough elements to consider that the riders were employees (<https://www.cooperativa.cl/noticias/pais/region-de-los-lagos/pedidos-ya-debera-pagar-millonaria-multa-tras-atropello-de-repartidor-en/2021-04-21/151349.html>)
16. The original bill contained a norm declaring that many of the indicia traditionally used to identify the presence of subordination and dependence, such as the existence of directives from the company, or the company's power to decide over rates or the use of quality-of-service evaluations, could not be 'by themselves' be seen as establishing that there is an employment relationship. This norm would be a special exception to the general rule that authorizes judges to identify employment relationships when elements of subordination and dependence are present.
17. The original text of the bill only established a series of rights and protections for platform workers, without making any mention of their employment status <https://www.diarioconstitucional.cl/2020/05/26/presentan-proyecto-de-ley-que-busca-establecer-garantias-basicas-a-las-personas-que-prestan-servicios-a-traves-de-plataformas-digitales/>
18. The report was presented by the Under Secretary of Labour (<https://www.subtrab.gob.cl/subsecretario-arab-entrega-resultados-de-la-mesa-de-trabajo-sobre-plataformas-digitales-a-la-comision-de-trabajo-del-senado/>).
19. See: <https://www.lizamabogados.cl/wp-content/uploads/2020/10/Informe-Plataformas-Digitales-2.pdf>
20. See: <https://www.cooperativa.cl/noticias/pais/trabajo/gobierno-pone-suma-urgencia-a-proyecto-que-busca-dar-garantias-sociales/2021-04-22/181836.html>
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25. La Organización Internacional del Trabajo (OIT) define salario mínimo como la 'mínima cantidad de remuneración que un empleador debe pagar a un trabajador por el trabajo realizado durante un período de tiempo determinado, el cual no puede ser reducido por un acuerdo colectivo o un contrato individual'. Las leyes de salario mínimo protegen a los trabajadores de salarios excesivamente bajos y les ayuda a conseguir un mínimo estándar de vida. La "Minimum Wage Fixing Convention, 1970 C135" de la OIT determina las condiciones y requerimientos para establecer salarios mínimos y llama a todos los países que lo ratifican a actuar en concordancia. Leyes de salario mínimo existen en más del 90

- por ciento de los países miembros del OIT.
26. De acuerdo con el informe de 2018 de la OIT “Digital Labour Platforms and the Future of Work”, por cada hora de trabajo remunerado, los trabajadores gastan 20 minutos en actividades no remuneradas, como por ejemplo, buscando tareas o estudiando a sus clientes. Para tener en cuenta este tiempo adicional que gastan buscando trabajo y el tiempo de espera entre tareas, nuestra definición de ‘tiempo de trabajo’ incluye las horas de trabajo directas (el tiempo completando una tarea) e indirectas (el tiempo viajando o esperando a una tarea).
27. El “+1” es una unidad del mínimo denominador de la moneda local, para asegurar un límite entre las dos figuras.
28. La tabla contiene cuatro columnas de datos. La primera es el porcentaje de trabajadores cobrando menos del salario mínimo (X). Las filas representan menos de ‘a tiempo completo’, ‘a tiempo completo’ y ‘a tiempo completo’ más horas extras.
29. Los impuestos no se consideran un gasto del trabajo.
30. El punto inicial es el “Occupational Safety and Health Convention, 1981 (C155)” de la OIT. Este estipula que los empleadores deben asegurar “dentro de lo razonablemente práctico, que los espacios de trabajo, maquinaria, equipamiento y procesos bajo su control son seguros y no ponen en riesgo la salud”, y que “cuando necesario, la vestimenta y equipamiento de protección adecuada (debe ser provisto) para evitar, dentro de lo razonablemente práctico, riesgos de accidente o efectos adversos en la salud”.
31. El “Maritime Labour Convention, 2006 (MLC 2006), Reg. 2.1” y “Domestic Workers Convention, 2011 (C189)”, artículos 7 y 15, de la OIT sirven como guías ilustrativas de las provisiones adecuadas en cuanto a los términos y condiciones, y al acceso a estos términos y condiciones por parte de los trabajadores.
32. El “Employment Relationship Recommendation, 2006 (R198)” de la OIT recomienda que los países miembros desarrollen marcos legales y de regulación que contengan indicadores específicos sobre la existencia de una relación laboral, que pueden incluir (a) el hecho de que el trabajo se lleve a cabo de acuerdo con las instrucciones y bajo el control de otra parte; requiera la integración del trabajador en la organización de la empresa; se realice solamente y principalmente para el beneficio de otra persona; deba llevarse a cabo personalmente por el trabajador; se lleve a cabo dentro de unas horas específicas o en un espacio de trabajo especificado o acordado con la parte que solicita el trabajo; es de una particular duración o tiene cierta continuidad; requiere la disponibilidad del trabajador; o implica la provisión de herramientas, materiales o maquinaria por la parte que solicita el trabajo; (b) pago periódico al trabajador; el hecho de que esta remuneración constituya la única o principal vía de ingresos del trabajador; la provisión de pago en especie, como comida, alojamiento, o transporte; reconocimiento de derechos como el descanso semanal y vacaciones anuales; pagos por la parte que solicita el trabajo por viajes realizados por el trabajador para realizar el trabajo; o ausencia de riesgo financiero por parte del trabajador’
33. Ver también el “Freedom of Association and Protection of the Right to Organise Convention, 1948 (C087)” de la OIT que estipula que “trabajadores y empleadores, sin distinción, deben tener el derecho de establecer y unirse a asociaciones de su propia elección sin necesidad de autorización previa” (Artículo 2); “las autoridades públicas deben evitar cualquier interferencia que restrinja o impida el ejercicio de este derecho” (Artículo 3) y que “las organizaciones de los trabajadores y empleadores no deben ser sujetas a ser disueltas o suspendidas por la autoridad administrativa” (Artículo 4). Similarmente, el “Right to Organise and Collective Bargaining Convention, 1949 (C098)” de la OIT protege a los trabajadores contra actos de discriminación anti-unión respecto a su empleo, explicando que no puede ponerse como condición para el empleo o como causa de despido el no unirse a una unión o renunciar a la afiliación a una unión. De los 185 países miembros, actualmente 155 han ratificado C087 y 167 han ratificado C098.



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