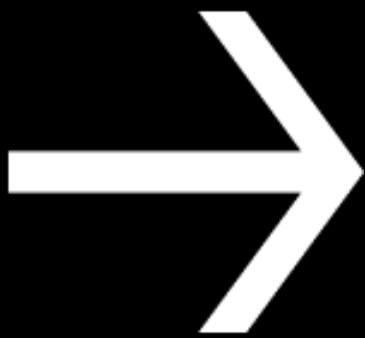


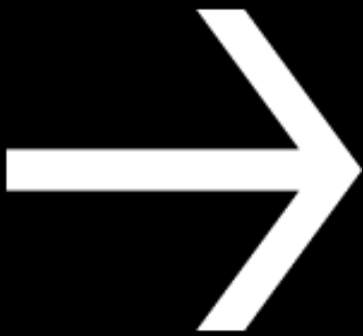
Emerging trends in the regulation of platform work in Brazil: a preliminary report



2024

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About us

Data Privacy Brasil is an organization that was born from a partnership between a school and a research association with the aim of promoting a culture of data protection and digital rights in Brazil and around the world. To achieve this purpose, we have the support of a multidisciplinary team and offer training, events, certifications, consultancies, multimedia content, public interest research and civic audits. These initiatives aim to promote fundamental rights and values linked to social justice in the face of contemporary technologies and datafication processes. Through education, awareness raising and mobilization of society, we seek a democratic society in which technologies are at the service of people's autonomy, dignity and reduction of power asymmetries. For more information about the organization, impact of their projects and how research is supported, please visit www.dataprivacybr.org or www.dataprivacy.com.br

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Introduction

The objective of this report is to present some trends in the regulation of platform work in the Lula government and the details of the Working Group in early 2023 to address the matter. Based on various media sources and knowledge located in the field of digital rights, we present a synthesis of the most relevant political movements and some of the open questions in the elaboration of new labor rights that are at the intersection with digital rights. We also present a first analysis of the Draft Bill presented by the Lula administration in early 2024, which was negotiated with workers and tech companies such as Uber, iFood and firms which operate as platforms for drivers and consumers, organizing the match-making for rides in the Brazilian cities.

This report has been organized around three main research sources. First, official news published by the federal government. Second, public presentations made at official events in the Federative Republic of Brazil. Third, interviews conducted with experts who closely follow the Brazilian Working Group. In order to produce this briefing, we interviewed Estela Aranha, from the Brazilian Ministry of Justice, Eugênio Corassa, researcher in Labor Law, Rafael Grohmann, from the University of Toronto, Daniel Santini, from Rosa Luxemburg Foundation, Aline Os, from Señoritas Courier, and Pedro Andrade, from AppJusto¹.

This report presents some early trends and potential avenues for legal reform. Bearing in mind that the target readership of this report is an international audience, we seek a didactic and, at the same time, synthetic explanation. In this sense, this report should not be seen as an in-depth analysis of regulatory issues in labor law. Its goal is more modest. What is sought is a first systematic look that seeks to connect Brazilian discussions with broader issues of digital rights, in particular the frontier discussions of “data as labor”, “platformized work”, “algorithmic management” and rights of automated review of the processing of personal data, in processes that occur through the intermediation of infrastructures and platforms.

Based on our preliminary investigation, we identified that (1) the discourse of decent work is one of the main components of Lula's political agenda in his third term as President of Brazil, (2) that the government faces challenges in the strategy of democratic dialogues to find a proposal for legislation on platform work and that (3) there is a great potential for South-South and North-South collaborations so that there are fairness parameters for platform work, including rights to contest automated decisions.

The promotion of the decent work agenda serves as a pivotal juncture bridging local initiatives with global imperatives. Concurrently, as Lula endeavors to usher in new federal legislation aimed at bolstering social rights for platformized self-employed workers, Brazil is actively pursuing collaborative efforts to advance declarations on decent work in partnership with key international stakeholders such as the United States government under the Biden administration and the G20 consortium. Notably, within the framework of the Inclusive Digital Transformation Task Force, dedicated attention is directed towards the promotion of decent work principles, encapsulated in the thematic focus area titled "New Digital Technologies for SDGs and Decent Work." This collaborative effort involves esteemed organizations such as the Institute of Technology and Society (Brazil), Red Sur (Argentina), and the Oxford Internet Institute (UK), underscoring the fusion of expertise from diverse geographical contexts. This symbiotic relationship between local and global actors is integral to Brazil's overarching geopolitical strategy and represents a concerted effort to rejuvenate the social rights agenda amidst the pervasive trends of datafication and platformization.

The size of the Brazilian market for platforms

In 2023, the Brazilian Institute of Geography and Statistics (IBGE), a prominent public research authority, conducted a comprehensive survey focusing on Brazilians engaged in application-based work. The study revealed a significant workforce of 2.1 million individuals reliant on these platforms as their primary source of income. Within this demographic, 1.5 million individuals are engaged in driving for passenger services or facilitating the delivery of food and products². Interestingly, the demographic breakdown highlights distinct trends. Predominantly, the workforce comprises males, constituting 81.3% of the total. Moreover, a considerable proportion, approximately 61.3%, possess a high level of education, with either completed secondary education or some progress towards higher education. Notably, the majority of these workers are youthful, with 48.4% falling within the age bracket of 25 to 39 years old. These findings shed light on the demographics and educational backgrounds characterizing this burgeoning sector of the Brazilian workforce.

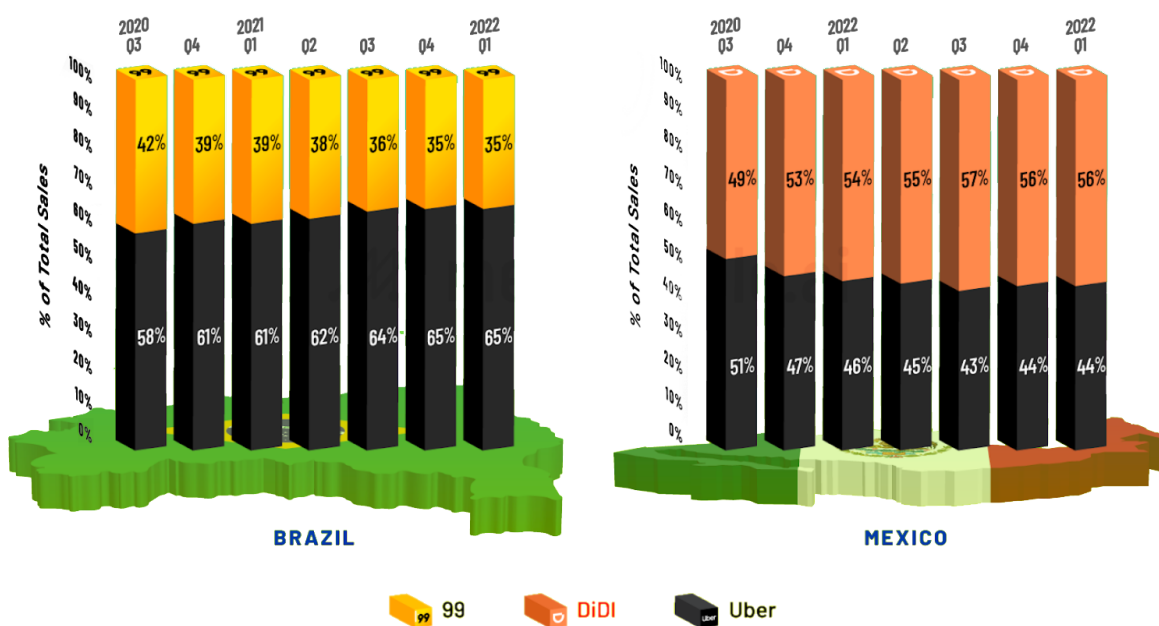
According to IBGE data, so-called “platform workers” now represent 2.4% of Brazil’s workforce. The survey excludes the public sector and military personnel, focusing solely on private sector workers, encompassing both formal and informal markets. Despite the average monthly income being R\$ 2,645, platform workers earn, on average, 5.4% more than the rest of the employed population, whose average income stands at R\$ 2,510. However, their work hours tend to exceed those of other private sector workers. The typical profile of an app-based driver for Uber or 99 is that of a male individual, with either completed secondary education or some progress towards higher education, aged between 25 and 39 years old. Their workweek spans an average of 46 hours, compared to the 39.5-hour average of other Brazilian workers.

According to a report published by Measurable AI data³, Uber boasts over 600,000 drivers spread across more than 100 cities in Brazil,

capturing a commanding 65% share of the market and solidifying its position as Uber’s largest market outside the US. Meanwhile, its primary ride-sharing rival, 99 (owned by DiDi), commands an estimated 750,000 active drivers, claiming 35% of the market share. Together, these two industry giants cater to a staggering 28 million active users in Brazil alone. Notably, since 2020, Uber has managed to seize a notable 7% market share from DiDi.

Conversely, in Mexico, DiDi reigns supreme, commanding a substantial 56% market share. Interestingly, during the same period, DiDi’s market dominance saw a 7% uptick. Essentially, the market gains Uber has made in Brazil have been counteracted by losses in Mexico. These market dynamics underscore the fierce competition and strategic maneuvering between these companies as they vie for supremacy on the global stage.

Latam Ride-hailing Market Share by Sales



Source: Measurable AI (2023)

According to IBGE data, in 2022, Brazil had 1.5 million people working through digital platforms and service applications, equivalent to 1.7% of the population employed in the private sector, but with substantial differences with relation to gender equality and commitment to social security. The proportion of male platform workers (81.3%) was much higher than that of workers employed in the private sector (59.1%). Around 77.1% of those employed on platforms are self-employed and 9.3% are employed in the private sector without a formal contract. The average income of digital platform workers with higher education (R\$4,319) was lower than that of non-platform workers with the same education (R\$5,348). While 44.2% of those employed in the private sector were informal, among platform workers this percentage was 70.1%.

2

The working group for platform work (“Working Group for Apps”)

In May 2023, the Federal Government of Brazil announced the Working Group for Applications, in Brasília, with a proposal to regulate the activities of providing services, transporting goods, transporting people and other activities carried out through technological platforms, foreseen in Decree nº 11.513⁴. The Working Group is formed by three sectors, involving representatives of the government, companies and workers.

The Decree 11.513 defines the functions and goals of the Working Group in the following terms:

***Art. 1** A Working Group is hereby established, within the scope of the Ministry of Labor and Employment, with the purpose of preparing a proposal to regulate the activities of providing services, transporting goods, transporting people and other activities carried out through technological platforms.*

***Art. 2** The Working Group is responsible for formulating proposals for:*

I - normative act to regulate the activities of providing services, transporting goods, transporting people and other activities carried out through technological platforms;

II - normative acts necessary for the implementation of the activity of providing services, transporting goods, personnel and other activities carried out through technological platforms.

Officially, the working group on application services has 17 representatives from the Executive, including four from the Ministry of Labor and Employment, in charge of coordination. The GT also comprises 15 representatives of workers and 15 of employers, including

members of employers' organizations, such as the Brazilian Association of Mobility and Technology (Amobitec), which brings together the largest companies in the segment operating in Brazil, including Uber, iFood and Amazon.

The launch of the Decree should be seen as part of the labor strategy of Lula, who is President of Brazil elected by the Workers' Party (*Partidos dos Trabalhadores*). The announcement of the Decree took place on May Day, which is a historic day of celebration for workers in Brazil. The announcement was also seen as the fulfillment of a campaign goal in 2022. To win the elections, Lula promised to face the debate on "decent work" and the regulation of work mediated by platforms. In this sense, the announcement has a special symbolic dimension as it falls on a commemorative date for workers in Brazil.

3

The Board of the Working Group in June and the debates in July

In June 2023, an official ceremony marked the public beginning of the Working Group. During the ceremony for the installation of the Working Group, the Minister of Labor and Employment, Luiz Marinho, said that the intention is to guarantee the rights of workers “without a strenuous working day, with valued and transparent work”. He said that there must be “serenity between the parties” so that there is a consensus, with the aim of delivering a balanced bill to the National Congress.



Source: Federal Government, Ministry of Labour (2023)

Representatives of the judiciary also participated in the ceremony, who spoke about the conditions of the workers. Lelio Bentes, president of the Superior Labor Court (*Tribunal Superior Eleitoral - TST*), recalled that more than 80% of transport app workers do not contribute to Social Security, therefore, they do not have assistance in

the case of illnesses, accidents at work, in addition to not have the length of service counted towards retirement.

As reported by Gustavo Drullis, from MobileTime:

The TST minister highlighted that work through applications is not restricted to the transport sector. Professionals linked to education, for example, are also helpless due to the lack of specific legislation, working without legal protection, informally. He said that the profile of platform workers corresponds to a part of the population historically excluded from “decent working conditions”. He mentioned research by the Brazilian Association of the Bicycle Sector (Aliança Bike), which showed that, in 2019, the majority of cyclist delivery drivers in the city of São Paulo were black, young and whose income was around R\$936 per month. The Deputy Attorney General for Labor, Maria Aparecida Gugel, spoke of the importance of the GT in listening to organized society through dialogue, as recommended by the International Labor Organization, as it considers labor relations and the dignity of workers. With the tripartite format, she hopes that the discussions will result in clear guidelines, guaranteeing workers’ rights and promoting a “fair and transparent” work environment⁵.

According to the president of the TST, around 71% of cyclist delivery drivers in São Paulo (SP) are black and the vast majority of them young (75%). “The majority work daily, without a week off, between nine and ten hours a day”, he highlighted. “Therefore, they are not even having access to rights such as holidays, 13th salary, weekly rest and working hours limits, achieved by the working class more than a century ago”. When defending the need to regulate these services, Lelio Bentes recalled that, in Brazil, the number of people in these conditions grows exponentially. In the transport sector, the number of self-declared self-employed people increased from **1.5 million** at the end of 2021 to **1.7 million** in the third half of 2022.

The meetings took place in the Plenary of the National Social Assistance Council (CNAS). At the meeting on July 4, companies and workers discussed the preparation of a service cost table and the definition of minimum remuneration for professionals who work in passenger transport applications. The executive secretary highlighted the importance of detailing all costs inherent to the activity, from tire expenses to fleet depreciation and the cost of fuel. Another highlight in the discussions was the **definition of minimum remuneration for workers who work in passenger transport applications**. According to the executive secretary of the Ministry of Labor and Employment, this is a sensitive and extremely important topic, as it seeks to ensure that workers receive fair remuneration for their work, taking into account the particularities of the activity.

The main topics of conflicts and the proposal from the private sector

In August 2023, an important business association, Amobitec, presented a document called Guidelines for Minimum Earnings. According to Amobitec, “it is essential to structure a new legal framework that adapts to the reality of work mediated by technological platforms, considering the specific characteristics and challenges of this sector and the gap in current legislation, as well as the profile of workers who use them”⁶.

Amobitec presented four proposals to the Working Group:

1. **Payment for the hour actually and demonstrably worked:** for the purposes of calculating minimum earnings, the period actually worked must be considered. In general, this period includes the travel time to the passenger or object of delivery and the time to transport the passenger or merchandise to its destination.
2. **Real earnings that consider workers’ approximate and average operating costs:** in order to ensure that workers’ earnings are fair and balanced, their main marginal costs associated with working on platforms must be included in the price to be charged of the end user, ensuring that their earnings per hour worked are effectively equal to or higher than the national minimum wage.
3. **Calculation of costs using a proportional parameter:** the calculation of operating costs to be included in the final price charged to the user must be proportional to the time or kilometers actually driven on trips intermediated by the platforms.
4. **Aggregated monthly verification of minimum earnings:** considering that the platforms have different business and pricing models and compete with each other for service providers and users, in addition to the fact that earnings per

race and delivery have variations caused by factors such as demand, it is essential that the verification of the application of the minimum values established for earnings occurs on a monthly basis.

There is an important conceptual difference here with the Consolidation of Labor Laws, the labor law legislation formulated in the 1940s in Brazil and updated to this day. The proposal does not speak of a minimum wage, but of “minimum earnings”, differentiating the classic employment relationship. Minimum earnings would not be verified per trip or day, but in aggregate form at the end of each month, in which each driver or delivery person cannot have received less than the minimum value stipulated per hour actually worked. If there is a difference, the platforms are obliged to carry out the supplement by the first week of the following period, the value of which may be incorporated into the final price to be charged to users. Furthermore, platforms must offer a monthly report in which it is possible to verify the application of the minimum value.

An important point of Amobitec’s argument is that **the time merely logged into the platform cannot be considered for earnings purposes**, for several reasons, among them: (1) the possibility of workers being logged in, but inactive in practice, due to other personal activities or even in the exercise of other jobs, given the nature of supplementary income that applications have for a good part of these workers, (2) the possibility of workers being logged into several platforms simultaneously and alternating trips between them; and (3) the possibility for workers to refuse travel offers, without there being any control over the time they remain logged in.

On August 14, at a meeting of the Tripartite Working Group, Amobitec presented a proposal for minimum earnings for drivers and delivery people who work through applications. Amobitec proposed that the equivalent of 262% of the current national minimum wage should be adopted as a minimum value per hour worked, in the scope of individual private passenger transport, and in the scope of delivery, the equivalent of 170% of the minimum wage for the mo-

motorcycle modal, with variations for car (181%) and bicycle (109%) also used in delivery activities.

At the end of August, Amobitec presented a new proposal for minimum earnings for drivers and delivery people who work through apps. The novelty was the incorporation of more cost items and aids listed in the proposals presented by the workers' group, such as car cleaning, food supplements, documentation expenses, etc. Amobitec proposes that the equivalent of 354% of the current national minimum wage be adopted as a minimum value per hour worked, in the scope of individual private passenger transport, and, in the scope of delivery, the equivalent of 200% of the minimum wage for deliveries carried out on a motorcycle⁷.

In September, **an agreement was not reached on the terms proposed by Amobitec**. As reported by Agência Brasil, the meeting on September 12th had no agreements with the workers and the associations:

In the federal capital, motorcycle couriers and delivery drivers demonstrated on the Esplanada dos Ministérios, asking that app companies offer decent minimum remuneration and decent working conditions, with health and safety guidelines, for their workers. Delivery drivers protested against the delay in regulating the service and argue that income per hour of work logged into the apps fell 53.60% after the apps became popular, from R\$22.90 in 2013 to R\$10.55 in 2023. The National Council of Motoboy and Motodelivery Unions, the National Alliance of Motoboy and Motodeliverers and the union centers demand minimum values of R\$35.76 for motorcyclists and R\$29.63 for professional cyclists per hour of work. The companies' proposals range from R\$10.20 to R\$12 for motorcyclists and from R\$6.54 to R\$7 for cyclists. They are represented by the Brazilian Mobility and Technology Association (Amobitec) - which brings together the companies Amazon, iFood, Flixbus, Uber, Zé Delivery, Buser, 99 and Lalamove - and by the Digital Innovation Movement (MID) - which brings together more than 150 companies ,

including Mercado Livre, GetNinjas, PayPal, Loggi, Movile, Americanas, C6 Bank, Facily, Rappi, OLX and euEntrego⁸.

After the negotiations failed, motorcycle couriers organized protests in Brasília in front of the Ministry of Labor and Employment. The proposal from the workers' committee in the working group reaches a **minimum value of R\$35.76 per hour (something like US\$ 7,5 per hour)⁹** available when adding remuneration payments (R\$6.50), operational costs (R\$9.42), rental of the motorcycle (R\$ 4.89), cost per delivery (R\$ 13) and hazard pay (R\$ 1.95). For bicycle work, the minimum value desired by couriers is R\$23.13 per hour. The workers' proposal, signed by SindmotoSP, a union that brings together motor freight workers and motor delivery drivers from São Paulo, also includes basic food baskets, life insurance and health insurance.



Source: Agência Brasil

Another point in the initial proposal of the federal government's discussion group is **transparency in workers' relationships with applications and platforms**. Amobitec suggests that minimum gains be verified in aggregate at the end of each month, through a report.

If the total value of hours worked is less than the minimum, companies are obliged to supplement the value. In this regard, MID (which brings together more than 100 digital-based companies, such as Rappi, Loggi, OLX, Paypal, InDrive, Alice, Quinto Andar, Sypla and Mercado Livre) suggests changing the blocking and suspension methods and the inclusion of rules, such as communicating in advance and detailing the reasons.

The question of Social Security: who should contribute?

In Brazil, social security taxes are vital for funding the country's social security system, which provides various benefits to citizens. The *Instituto Nacional do Seguro Social* (INSS), or National Institute of Social Security, manages these benefits. INSS collects social security taxes from both employees and employers, using them to finance programs such as retirement pensions, disability benefits, sickness benefits, maternity leave, and death benefits.

The role of INSS involves collecting contributions directly from employees' salaries and matching them with contributions from employers. It also administers benefits by processing applications, determining eligibility, and disbursing payments. Additionally, INSS ensures employers comply with their obligation to withhold and remit social security contributions. It monitors compliance and takes enforcement actions when necessary. Furthermore, INSS manages the funds collected through social security contributions, investing them to generate returns. These funds finance current benefit payments and build reserves for future obligations. INSS operates offices nationwide, providing information and assistance to individuals regarding their social security rights and benefits. Overall, INSS plays a crucial role in ensuring Brazilians have access to essential social security protections throughout their lives.

The social security contribution was the second main item under discussion in the Working Group of 2023. The idea of adopting a rate between 11% and 20% was raised by companies and private associations. **The union movements asked the ministry for 7.5% as a ceiling for workers (the maximum that could be charged for workers).** The companies suggest a single rate of 11%, divided between platforms and workers in a proportion of 50% for each side. If the government agreed, each party should pay 5.5% to the INSS (*Instituto Nacional de Seguridade Social*). In return, companies would collect money to reduce the risk of default on the part of workers.

As argued by Nivaldo Santos, a reporter for Jota, there is a crucial issue in this definition, which is the value of “minimum earnings”:

The rate depends on the definition of minimum earnings for the government to estimate revenue. There is no way to define the second item without the first. Companies know this and will try to secure a commitment from the government via social security for their proposed contribution to the INSS with the lowest cost impact. There is another ploy by the platforms behind the 11%. This is the rate for individual providers such as individuals of services to legal entities. If it adopts the percentage, the government would end up, between the lines, recognizing workers as self-employed. Carvalho told JOTA that the type of employment relationship (CLT, self-employed or MEI) should not enter the legal framework, as the government faces resistance from some categories that are against the self-employed model (delivery drivers) and the CLT (drivers, who see themselves more as entrepreneurs).

The government’s interest in stipulating a clear social contribution rule is to increase public coffers and establish basic social rights that are guaranteed by the Social Security structure.

The strategy being designed is that this can be done without recognizing an employment relationship under the CLT. The legislative model for regulating app-based work is a very controversial point. The union centrals’ proposal provides for “a work relationship defined in accordance with current legislation” (CLT) and claims that working conditions must follow the definitions set out in the CLT, with other regulations defined in collective bargaining. The big apps consider that the creation of new legislation is one of the central points for the debate to move forward. “It is essential to approve new legislation that is consistent with the reality and particularities of work mediated by technological platforms”, says a document from iFood, Uber and others.

As it will be seen in the final part of this report, one of the main elements of the Draft Bill of Autonomous Platform Work in Brazil is the exceptional model of taxation system designed for these workers and how the conflict about the INSS contribution was resolved. The “self-employed platform worker”, the name for labor purposes of the proposed new category, will receive R\$32.09 per hour of work and remuneration of at least one minimum wage (R\$1,412) and a contribution of 7.5% to the National Social Security Institute (INSS). Companies will pay a 20% rate to the INSS.

As can be seen, the Lula government positioned itself alongside the workers’ unions and established a minimum contribution of 7% for drivers. The government did not agree with the minimalist INSS proposals at 11% and defined a percentage of 27%, with 20% being the responsibility of companies and 7% of workers. In this model, companies have a greater responsibility for the continuity of social security policies.

6

Worker-owned and governed alternatives



Source: Rosa Luxemburgo Foundation (2023)

Alongside these movements that demand the regulation of platform work, we're attentive to another emerging trend that is spreading internationally and gaining strength in Brazil: the rise of worker-owned and governed platforms. The movement was initiated by the translation to Portuguese of the main texts that propose “platform cooperativism” as a fairer and more democratic digital economy, specially written by academics from The New School - NY Trebor Scholz and Nathan Schneider. Since 2015, the discussion about the topic is rising more and more not only in academic forums, but also in political ones and is inspiring concrete initiatives. One example of the public importance of the topic nationally was the delivery of a “Action plan for the platform cooperativism in Brazil” to the president Lula in September of 2022. The document was written by a series of actors and movements in a seminar about platform coop-

erativism and public policies.

If the movement was initially influenced by the platform cooperativism concept, more recently other conceptualizations and influences are emerging to overcome its limitations. The professor of Toronto University Rafael Grohmann proposes the concept of “worker-owned platforms” from the observation that many of these initiatives are not formally cooperatives according to the national regulations.

One of the most prominent cases inspired by the platform cooperativism movement in Brazil is *Señoritas Courier*, a delivery cooperative of women and trans people from São Paulo. The organization was created by Aline Os, one of the interviewed experts for this report, with the aim of creating a better condition for delivery women, that faces the dangers and inequalities of this profession more intensively for their gender and sexual orientation. Another interesting point of this initiative is that they’re creating their own delivery platform with orientation of the Technology Sector of the Houseless Movement (MTST). This is an interesting coalition between workers of different sectors for the creation of more democratic and equal working conditions and infrastructures.

Perceptions of the interviewed experts

The expectations of many experts about the working group are quite limited. Platform regulation is not an easy topic to negotiate. Lula raised the issue as a political campaign in 2022 but has not been able to organize concrete proposals. After the 120-day deadline, no text was agreed upon in a consensual manner. The most indispensable point of regulation is the way in which the worker will be hired. The option for the work regime (CLT) involves working hours, vacations, thirteenth salary and employment relationships¹⁰. The Federal Supreme Court, however, has maintained the position of affirming the possibility of self-employed workers, in contrast to what has been understood by the Superior Labor Court. In our interpretation, there is a great vector of force for the recognition of a distinct legal regime, which would be capable of recognizing collective benefits and arrangements, but without the classic figure of the CLT.

There is a great tension between the vision of new social movements on labor rights and the vision of the old movements that emerged in the ABC Paulista region, which constitute the matrix of contemporary Brazilian labor. Eugênio Corassa, researcher of Labor Law, said in an interview:

The form of organization of unions is very specific and does not necessarily take into account the ways of organizing app workers, who organize themselves through Whatsapp groups and network logic. Dealing with these two communication logics is complex and unions are not necessarily able to communicate effectively with delivery app leaders.

Estela Aranha, on the other hand, considers that the composition of the Group is very correct and that each Ministry has indicated suitable people for negotiation. The **employment relationship discussion is very embryonic** and will not be resolved now. The most important points are minimum value (including the methodology for calculat-

ing worker costs) and social security calculation. According to Estela, certain types of sectors could be more apt to think of the platform as an **intermediation activity**. Car drivers are less vulnerable and are more in favor of the idea of intermediation and match-making. Motorcycle couriers are more vulnerable and are more interested in classifying the platform as a **service provider**.

Daniel Santini, considers that companies have a great capacity to communicate their agenda and the capacity to mobilize publicly about drivers' freedoms, which cannot be curtailed:

Technology companies have managed to advance massive models, very quickly, and consolidate a logic that is very profitable. Companies will present strong resistance. It is worth taking a look at the way in which companies like Uber and iFood, to name two of the largest that are operating in Brazil today, operate in any attempt at regulation. If you have a proposed law, you will have a very strong lobby against it. You have public awareness. You will have full page ads or articles, editorials. Companies have specialized departments, they have a very consolidated logic of working under pressure against any attempt at regulation. I think the working group has the possibility of moving forward. It is talking about structures that are very powerful and have many resources and that they will not simply conform to the idea that "yes, now we have rules and we have to respect them". To put this together, they use a discourse of freedom. So it is the freedom of the employer, it is the freedom of the market, the freedom that must be radical and must not have any form of resistance to liberalism. And although there is an appeal, it is very simplifying.

Aline Os, founder of the delivery cooperative Señoritas Courier, member of the Working Group representing workers, said that workers expect the government to **classify the companies as transport companies**. Today they present themselves as intermediaries

or technology companies. The framework would strengthen the search for rights. “This was the first point debated at the table and not exhausted, but the government said it would take over and now the agenda is in their hands”. According to Ms. Os:

We did not address important issues that are on workers’ list of guidelines, such as pensions, algorithmic transparency, health and safety. But the idea is that we can debate these topics soon. In my opinion, the pension issue could lead to a very tense debate, as the unions want companies to assume the relationship; other groups are debating de facto autonomy. And the agreement will only be signed when there is consensus. The issue of algorithmic and data transparency are also sensitive points, as they will require experts to defend workers’ rights.

Eugênio Corassa stated that algorithmic management is a topic that could grow in Brazil, but that it does not have as much appeal as in the United Kingdom, so far. Today the central discussion is the link between the parties, but there is a future potential to discuss the explainability rights of algorithmic decisions. According to Corassa:

There is a chance that the working group will go very wrong, but it could bring interesting results. The most important point will be taking a position on the existing employment relationship. If it is an intermittent employment relationship, it may have specific consequences.

Other experts have a more skeptical view of the results. The points of algorithmic transparency and automated review rights are not on the agenda for discussion yet. The central points can be summarized as:

- » Creation of a minimum remuneration value
- » Definition of whether remuneration also includes time

logged under certain conditions

- » Definition of platforms as providers of transport services (and not technological intermediation)
- » Institution of INSS payment allocation regime (social security)
- » Guarantee of the right to free association, union representation and collective negotiations.

Based on our interviews conducted in 2023 and insights gathered through Data Privacy Brasil's monitoring of the government's platformed work agenda, our report identifies three key regulatory trends.

Firstly, there is a notable governmental effort to navigate towards a middle ground for ensuring decent work standards without rigid adherence to traditional "registered worker" models established in mid-20th-century Brazilian labor legislation. This represents a significant departure from historical norms, particularly given the emphasis on classic labor rights historically championed by the Workers' Party. This shift reflects a willingness to adapt old convictions and embrace new legal frameworks conducive to promoting decent work.

Secondly, a major focus lies on addressing the intricacies of pension system organization within the context of platform work. Central to this concern is the issue of non-contributions to the National Social Security Institute (INSS), presenting a significant tax challenge. While the government acknowledges the distinct nature of this market, there is a pressing need for equitable tax arrangements to ensure the sustainability of social policies rooted in redistributive principles.

Thirdly, there is a critical recognition of the importance of safeguarding fundamental rights in the face of automated decision-making and algorithmic management prevalent in platform work environments. The elusive nature of traditional "boss's orders" in this setting, often concealed within mathematical algorithms and automated management systems, poses unique challenges. Instances of

punitive measures and abusive practices occur devoid of direct human intervention, necessitating the reaffirmation of worker dignity through the establishment of new digital rights aimed at contestability. Collective bargaining concerning data flows and decisions driven by algorithmic analysis of worker activities while engaged with the platform emerges as a vital avenue for ensuring fair treatment and protection of worker rights in this evolving landscape.

The proposal of the federal government in 2024



Source: Agencia Brasil (2024)

“But we’re going to be so annoying that iFood will have to negotiate to do what you did in transport”, said President Lula when signing the complementary bill (**PLP 12/2024**) that regulates the activity of transport drivers. mediated by applications on four-wheel vehicles in Brazil.

The Brazilian president’s speech summarizes the events for the regulation of the matter. iFood is a Brazilian company operating in the online meal delivery business, being a leader in the sector in Latin America, with a presence only in Brazil. The text of the regulation is exclusive to **transport activities (“four wheels”)**, therefore, only for companies like Uber and 99. However, Lula made clear his dissatisfaction with iFood for blocking broader regulation of platformed work.

Complementary Bill 12/24¹¹ regulates the work of app drivers for passenger transport. The objective, according to the Executive Branch,

is to guarantee app drivers a package of labor and social security rights without interfering with the autonomy they have to choose working hours and hours. The proposal does not include delivery people who provide services via an app.

The Draft Bill mentions a national registration that must be done according to the Data Protection Law¹². It also mentions that the workers are **self-employed workers on a platform**¹³. It also separates two wheel drivers and four wheel drivers, guaranteeing social rights of collective negotiation only for the four wheel drivers. The third paragraph of Article 3 says:

The worker mentioned in this article is part of the professional category “four-wheeled vehicle application driver” and will be represented by a union that covers the respective professional category, and application operating companies will be represented by a union entity of the specific economic category, with the following duties:

I - collective bargaining;

II - conclusion of a collective agreement or convention; It is

III - collective representation of workers or companies in judicial and extrajudicial demands of interest to the category.

In fact, this division between four wheels and two wheels is curious. In this case, workers on two wheels are the most precarious in the Brazilian context. With the beginning of the COVID-19 pandemic and the establishment of social isolation in 2020 around the world, the population was forced to stay in their homes and only those working in professions considered essential could go out into the streets. Food delivery people were considered essential during this period, especially for the country's economy, this activity became an alternative for people who found themselves without a source of income at that time. According to studies by the company Mobills, delivery increased by 187% in 2020 in Brazil¹⁴.

Poor pay, long hours of work, few days of rest and no labor rights. These are just some of the many problems faced by app delivery

people. The trajectory of Brazilian workers has been precarious throughout its history, with a legacy of a slave and colonial past, reinforcing how legitimate the fight for work regulation is. The rate of hospitalizations for motorcycle trauma had the biggest increase in ten years, considering the SUS and partner networks. Between 2020 and 2021 it went from 5.5 per 10 thousand inhabitants to 6.1. The rate rose 55% in a decade. In total numbers, it jumped from 70,508 in 2011 to 115,709 in 2021. Men represented 88.1% of fatal victims in 2021¹⁵. “There are still applications for deliveries, workers, motorcycle couriers, motorcyclists. We are not there yet. And perhaps it is a category that suffers even more than the comrades who are here”, concluded the Minister of Labor, Luiz Marinho, during the event. During the collective negotiation process, the parties involved will be encouraged to seek consensual solutions before suing the Judiciary, in order to promote the amicable resolution of disputes and strengthen autonomy in collective negotiation, dialogue and self-composition in the work relationship mediated by application operating companies.

The language of the Draft Bill clearly denies the traditional concept of employment relationship (“relação de emprego”). It does by saying that many surveillance and monitoring measures can be adopted by platforms without constituting a formal employment relationship. Article 5 reads the following:

Article 5. *Application operating companies are authorized to implement the following practices, without this constituting an employment relationship under the terms of the Consolidation of Labor Laws, approved by Decree-Law No. 5,452, of May 1, 1943:*

I - adoption of standards and measures to guarantee the safety of the platform, workers and users, to prevent fraud, abuse or misuse of the platform, observing the rules previously stipulated in the terms of use and in the platform’s membership contracts;

II - adoption of standards and measures to maintain the

quality of services provided through the platform, including suspensions, blocking and exclusions, observing the rules previously stipulated in the terms of use and in the platform's membership contracts;

III - use of real-time monitoring systems for the execution of services and routes taken;

IV - use of worker and user evaluation systems; It is

V - offering courses or training, as well as any benefits and incentives to workers, monetary or otherwise, even if ongoing.

Article 6 says that the exclusion of the self-employed worker from the transport application can only occur unilaterally in the event of fraud, abuse or misuse of the platform, guaranteeing the right of defense, in accordance with the rules established in the terms of use and in the platform's membership contracts.

The text of Article 6 of the Draft Bill regarding the exclusion of self-employed workers from transport applications falls short in addressing the emerging issue of algorithmic management in the gig economy. By failing to mention algorithmic management, the article overlooks a critical aspect of modern labor relations, particularly in platforms where automated decision-making processes heavily influence workers' livelihoods.

Algorithmic management refers to the use of algorithms and data analytics by platforms to manage and monitor workers, assign tasks, and make decisions regarding their employment status. These algorithms often lack transparency and may lead to unjust outcomes for workers, including arbitrary exclusions from the platform without due process.

The absence of explicit references to algorithmic management in Article 6 means that the Draft Bill does not adequately address the potential risks associated with automated decision-making in platform-mediated work. Without clear guidelines on how algorithms should be used and how workers' rights should be protected in algorithmic decision-making processes, there is a significant risk of unfair treatment and exploitation of workers by platforms.

Workers in the gig economy face the threat of unjust automated decision-making by platforms in several ways. Firstly, algorithms may unfairly penalize workers based on opaque performance metrics, leading to unwarranted exclusions from the platform without recourse for the affected workers. Secondly, algorithms may perpetuate biases and discrimination against certain groups of workers, further exacerbating inequalities in the labor market. Lastly, the lack of transparency in algorithmic decision-making processes makes it challenging for workers to understand and challenge decisions that affect their employment status.

To address these issues, legislation should incorporate robust safeguards to ensure that workers' rights are protected in algorithmic management systems. This may include provisions for transparency and explainability of algorithms, mechanisms for challenging automated decisions, and requirements for platforms to provide meaningful opportunities for workers to contest adverse decisions. By explicitly addressing algorithmic management in labor regulations, policymakers can better protect the rights and interests of workers in the gig economy.

Finally, an analysis of articles 7 and 8 of the bill is very important. Article 7 determines some universal principles for providing services on platforms:

Article 7. *The services of application operating companies and the work intermediated by their platforms must be guided by the principles of:*

I - transparency;

II - reduction of risks inherent to work;

III - elimination of all forms of discrimination, violence and harassment at work;

IV - right to union organization, unionization and collective bargaining;

V - abolition of child labor;

VI - elimination of work analogous to slavery.

Here, highlight an outdated reading once again in the formulation of the matter. Work in the 21st century, especially platform work, demands regulation in accordance with workers' digital rights. With Constitutional Amendment 115/2022¹⁶, the right to protection of personal data, supervision and processing of data are constitutional rights in the Brazilian legal framework, that is, the explicit absence of this treatment, even more so when talking about work in the digital environment, will determine an error in principle, determining gaps in the law that will not make the fundamental minimum guarantees of human rights in this category explicit. Next, article 8 tries to dialogue with the principle of transparency mentioned in article 7, but it is noted that it is an artificial transparency, publicizing the choice criteria, but, again, not exposing the algorithmic mechanisms that determined such actions. In other words, it shows the surface, but not the infrastructure behind it, which will perpetuate the asymmetries and discrimination already mentioned.

***Article 8.** The principle of transparency referred to in item I of the caput of article 7th must allow the worker to have access to information about the criteria for offering travel, scoring, blocking, suspension and exclusion from the platform in clear and easy-to-understand language, and also to the criteria that make up the value of their remuneration, through monthly report that details the sum of time worked, the total remuneration, the specific remuneration for services performed at times of high demand, the average value of the hour worked and its comparison with the minimum remuneration established in this Complementary Law, in accordance with the provisions of the regulation.*

The bill only covers issues of legal definition, collective bargaining and basic exclusion, with a limited look at the processes involving platformed work, or in the digital world. The entire fundamental rights agenda, highlighting here digital rights, automated decision

contestation and algorithmic management power is absent, in addition to parameters for the secondary use of data. The text requires explicit changes to guarantee rights.

The political choice of the government was to deal with key issues like payment structures and taxation for the so-called self-employed platform worker and the big platforms that operate in this market. Changes include shifting driver remuneration to an hourly rate instead of per mile, despite concerns about factors like time, traffic, and waiting affecting income. Workers will now receive a compensatory amount for expenses like phone use, fuel, and insurance, a basic social right already guaranteed in Argentina and Spain. They'll also be entitled to a minimum wage and social security benefits, aligning with the General Social Security Regime. However, the regulation allows for 12-hour workdays, deviating from labor laws in other countries and Brazil's existing standards. Right wing groups in Brazil argue that this is a violation of free enterprise and that drivers should be free to decide how many hours they should ride per day.

Final considerations

The negotiation process between parties affected by the phenomenon of “platformization of work” in Brazil can be seen ambiguously. The topic is not new. In reality, debates about the type of work carried out by people connected to Uber or 99 date back more than 10 years. There are thousands of legal cases and academic discussions about the type of legal relationship between users and platforms. What is new in this process is the way in which the Lula government sought to build a negotiation process to construct a low-friction legislative text.

This approach can be seen as positive and negative at the same time, hence its ambiguous nature. From the point of view of democratic gains, the composition of the Tripartite Group was important for composing forces and creating a permanent negotiation process. On the other hand, the parity of weapons was not equivalent. The process was affected by several asymmetries and ended up producing a result that, in the eyes of the participants themselves, was quite limiting and frustrating for the social rights agenda.

The discussions and debates within the working group were not publicized, making it difficult to understand the relationship of forces between workers and companies in the final result of the Draft Bill (**Complementary Bill 12/24**). Another criticism was the absence of associations directly linked to platform workers, the government prioritized its base, indicating the union centers for the debate to the detriment of groups such as the Brazilian Federation of Application Drivers (Fembrapp), the entity representing 20 driver associations per application in the country.

One of the main government proposals that elected the president for his third term at the head of the country, leaves the imagination and gains ink and paper with the creation of the new professional category, that of self-employed platform worker, in line with court decisions of the Federal Supreme Court (STF). There is no exclusivity agreement. The driver can work for as many platforms as he wishes,

the main ones in Brazil being Uber, 99 and InDrive.

It is worth mentioning that the STF is judging in accordance with recent changes in legislation. During the Michel Temer government, the approval and promulgation of laws 13429/17¹⁷ and 13467/17¹⁸ legitimizes the permission of outsourcing in any area of the company, whether it is a core activity or not, thus opening up the possibility of indiscriminate outsourcing in the private sector, making the modality extremely beneficial for employers and harmful for employees, who will have a lower salary and suppressed rights.

The creation of this new category of self-employed platform worker demonstrates a significant retreat from the government's traditional agenda. The president was elected with a government program that would revoke the changes in labor legislation brought by Temer, with the idea of including platform workers in the Consolidation of Labor Laws (CLT). However, the government gives in to pressure from companies, legitimizing self-employment, thus expanding the process of precarious work that was previously criticized. However, labor law experts criticize the new categorization, arguing a structural problem in defining the worker and employer relationship, as in the simple reduction of companies that provide transport services to a mere travel intermediary between their customers and drivers. Considering the centrality of the decent work agenda for the Lula government and the growing overlap with digital rights issues (algorithmic management, due process on platforms, rights to contest, community management of personal data), we hope that there will be a deeper and more significant combination (or interplay) of this agenda in the coming years.

Philanthropic entities, research centers and civil society organizations (in the field of work and in the field of fundamental rights) need to promote more exchanges of knowledge and strategies to think about the future of decent work in markets mediated by data and digital platforms. There is also a need for more empirical studies on the harm suffered by workers in algorithmic management processes and difficulties in defending their fundamental rights in relation to data.

We hope that this research agenda will be promoted not only by the philanthropic field, but by the public entities that promote research in Brazil (CNPq, FAPESP, research support foundations). We also hope that more qualitative studies can be produced so that there is a critical diagnosis of the institutional choices underway.

Endnotes

1 We thank all the participants for their kindness and time dedicated to share their point of view.

2 Letícia Lopes & Mayra Castro, Pesquisa inédita do IBGE mostra que Brasil tem 2,1 milhões de trabalhadores por aplicativo, O Globo, October 25th 2023. Available at: <https://oglobo.globo.com/economia/noticia/2023/10/25/pesquisa-inedita-do-ibge-mostra-que-brasil-tem-21-milhoes-de-trabalhadores-por-aplicativo.ghtml>.

3 Michelle Tang, Ride-hailing In Latin America: A Race Between Uber and Didi's 99, Measurable AI, August 18th 2022. Available at: <https://blog.measurable.ai/2022/08/18/ride-hailing-in-latin-america-a-race-between-uber-and-didis-99/>.

4 See: http://www.planalto.gov.br/ccivil_03//2023/decreto/D11513.htm.

5 See: <https://www.mobilettime.com.br/noticias/05/06/2023/governo-constitui-grupo-de-trabalho-para-propor-regulamentacao-de-apps/>.

6 See: <https://amobitec.org/wp-content/uploads/2023/08/Amobitec-Proposta-de-ganhos-minimos-para-o-GT-vf.pdf>.

7 See: <https://amobitec.org/amobitec-apresenta-ao-grupo-de-trabalho-nova-proposta-de-ganhos-para-atividade-intermediada-por-aplicativos/>.

8 See: <https://agenciabrasil.ebc.com.br/geral/noticia/2023-09/entregadores-por-aplicativo-rejeitam-proposta-de-empresas>.

9 Uber, DoorDash and Grubhub must pay their food delivery workers at least \$17.96 an hour after losing their second attempt to block New York City's minimum wage law targeting the app-based firms.

10 In order for the employment relationship to be established, certain requirements must be met, as established by art. 3rd of the Consolidation of Labor Laws: any individual who provides services of a non-occasional nature to an employer, under the latter's dependence and for a salary, is

considered an employee. In this sense, the requirements for characterizing the employment relationship are: service provided by an individual, personality, non-eventuality, subordination and onerousness.

11 See: <https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2419243>.

12 “The provision of services intermediated by a company operating the application referred to in the caput presupposes the completion of **personal and non-transferable registration of workers and users**, in compliance with the provisions of Law N°. 13,709, of August 14, 2018, and Law N°. 12,587, January 3, 2012”.

13 “The worker who provides the service of individual private paid transportation of passengers in a four-wheel motor vehicle, with the intermediation of an app operating company, will be considered, for labor purposes, a self-employed worker on a platform and will be governed by this Complementary Law whenever he provides the service, as long as you have full freedom to decide on days, times and periods in which you will connect to the application”.

14 The “Boom” of Delivery platforms in Brazil and its peculiar consequences. Available at: <https://portal.fgv.br/artigos/boom-plataformas-delivery-brasil-e-suas-consequencias-peculiares>.

15 Research carried out by the Ministry of Health. Available at: <https://www.gov.br/saude/pt-br/assuntos/noticias/2023/maio/taxa-de-internacao-entre-motociclistas-tem-maior-alta-em-10-anos>.

16 See: https://www.planalto.gov.br/ccivil_03/constituicao/Emendas/Emc/emc115.htm#:~:text=EMENDA%20CONSTITUCIONAL%20N%C2%BA%20115%2C%20DE,e%20tratamento%20de%20dados%20opessoais.

17 See: https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/lei/113429.htm.

18 See: https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/lei/113467.htm.