



GOBIERNO
DE ESPAÑA

MINISTERIO
DE TRABAJO
Y ECONOMÍA SOCIAL

PLATFORM WORK IN SPAIN

Recent developments: case law, agreement
between social partners and legal reform

西班牙的平台工作

最新发展：判例法、社会伙伴之间的协议和法律改革

- I. Framing the issue 问题阐述
- II. Legal context 法律背景
- III. Case law 判例法
- IV. Agreement between social partners
and legal reform 社会伙伴之间的协议
- V. Conclusion 结论

I. FRAMING THE ISSUE 问题阐述

I. FRAMING THE ISSUE 问题阐述

► Aim 目的

- A general framework of rights for platform workers akin to those applicable to the rest of workers 建立平台劳动者的一般性权利框架，类似于适用于其他劳动者的一般性权利框架

► Labour law and innovation 劳动法和创新

► Judicial support 司法支持

► Social consensus 社会共识

II. LEGAL CONTEXT 法律背景

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► The scope of Spanish labour law

西班牙劳动法的范围

- i. Voluntary work 自愿性工作
- ii. Personal work 亲自完成
- iii. Paid work 带薪工作
- iv. Work performed on the employer's behalf
代表雇主从事的工作
- v. Subordinated work 从属性工作

II. LEGAL CONTEXT 法律背景

► The scope of Spanish labour law 西班牙劳动法的范围

- If the requirements are met 如果满足条件



The Workers' Statute is applicable
适用《工人法》

II. LEGAL CONTEXT 法律背景

- ▶ Challenged requirements 质疑
 - i. Voluntary work 自愿性工作
 - ii. Personal work 亲自完成
 - iii. Paid work 带薪工作
 - iv. Work performed on the employer's behalf 代表雇主从事的工作
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II. LEGAL CONTEXT 法律背景

► Challenged requirements 质疑

- iv. Work performed on the employer's behalf 代表雇主从事的工作
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II. LEGAL CONTEXT 法律背景

► Main arguments 主要论点

- i. Rejection of orders/requests 拒绝订单/要求
- ii. Platforms as intermediaries 平台作为中介
- iii. Non-labour contracts 没有劳动合同
- iv. Professional autonomy 职业自主权
 - Own means 对方法/手段的控制
 - Worktime 工作时间

III. CASE LAW 判例法

III. CASE LAW 判例法

- ▶ Series of landmark verdicts
一系列具有里程碑意义的判决
- ▶ Last one: **the Supreme Court Judgment of 25 September 2020**
最近一次：2020年9月25日最高法院判决

III. CASE LAW 判例法

► Supreme Court: preliminary arguments **(CJEU)**

最高法院：初步论点

i. Subordination and rejection of requests

从属性和拒绝要求

(Allonby v Accrington and Rossendale College)

Allonby诉阿克林顿和罗森代尔学院

i. Critical influence over the service

对服务的关键影响

(Elite Taxi v Uber Systems Spain, SL)

Elite出租车公司诉Uber西班牙

III. CASE LAW 判例法

► Supreme Court: preliminary arguments (own case law)

最高法院：初步论点（自身的判例法）

iii. Prevalence of factual reality 事实的普遍性

iv. Subordination and “work on behalf of”
从属性和“代表...从事工作”

- Ownership of means 对手段的控制权
- Worktime 工作时间

III. CASE LAW 判例法

► Supreme Court: main reasoning

最高法院：主要观点

- i. Platform workers are not self-employed professionals 平台劳动者不是自雇职业者
 - Organization 组织化
 - Main infrastructure 主要基础架构

III. CASE LAW 判例法

► Supreme Court: main reasoning

最高法院：主要观点

ii. Subordination 从属性

- Rejection of orders 拒绝订单
- Election of the timespan in which orders are received 选择接收订单的时间跨度

III. CASE LAW 判例法

► Supreme Court: main reasoning

最高法院：主要观点

ii. Subordination 从属性

Scoring system 计分系统

III. CASE LAW 判例法

Scoring system 计分系统

1. Poorer client ratings 客户评价差
2. Rejection of orders 拒绝订单
3. Not being available on busy timespans 在繁忙时段不接单

=

Lower scores 扣分

=

Fewer chances to get orders in the future
未来得到订单的机会减少

III. CASE LAW 判例法

Scoring
system
计分系统

Negative consequences 不利后果
=
Control by the employer
(subordination)
受雇主控制 (从属性)

III. CASE LAW 判例法

► Supreme Court: main reasoning

最高法院：主要观点

ii. Subordination 从属性

- Other indications 其他迹象

- a. Instructions 指令

- b. Company credit card 公司信用卡

- c. Compensation of waiting time 补偿等待时间

- d. Key information 关键信息

III. CASE LAW 判例法

► Supreme Court: main reasoning

最高法院：主要观点

iii. Work “on behalf of” “代表...” 工作

- Prices 价格
- Payment methods 支付方法
- Remmuneration 报酬

III. CASE LAW 判例法

► Supreme Court: main reasoning

最高法院：主要观点

- Applicable to similar business models
适用于类似的商业模式



Legal reform 法律改革

IV. AGREEMENT BETWEEN SOCIAL PARTNERS AND LEGAL REFORM

社会伙伴之间的协议和法律改革

IV. AGREEMENT BETWEEN SOCIAL PARTNERS AND LEGAL REFORM

社会伙伴之间的协议和法律改革

- ▶ The preparation of a legal reform had started before the Supreme Court verdict
法律改革的启动早于最高法院判决
- ▶ Motivation of the reform 改革的动因

IV. AGREEMENT BETWEEN SOCIAL PARTNERS AND LEGAL REFORM

社会伙伴之间的协议和法律改革



► Judgment of 25 September 2020

2020年9月25日判决



Agreement between social partners
(10 March 2021)

社会伙伴达成协议（2021年3月10日）

IV. AGREEMENT BETWEEN SOCIAL PARTNERS AND LEGAL REFORM

社会伙伴之间的协议和法律改革

► Key features 主要特征

i. Scope 范围

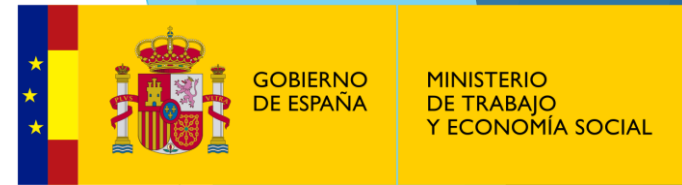
Workers that: 劳动者:

- Provide delivery services 提供送货服务
- Via online platforms 通过在线平台
- If these platforms administer their services through algorithms

如果这些平台通过算法管理服务

IV. AGREEMENT BETWEEN SOCIAL PARTNERS AND LEGAL REFORM

社会伙伴之间的协议和法律改革



► Key features 主要特征

- ii. These individuals are assumed (unless proven otherwise) to be workers

这些个人被认定为工人（除非另有证明）



The Workers' Statute applies to them

《工人法》适用于他们

IV. AGREEMENT BETWEEN SOCIAL PARTNERS AND LEGAL REFORM

社会伙伴之间的协议和法律改革



► Key features 主要特征

- iii. The legal representatives of the workers must be informed about the design of the algorithms

必须告知工人的法律代表有关算法设计的信息

V. CONCLUSION 结论

