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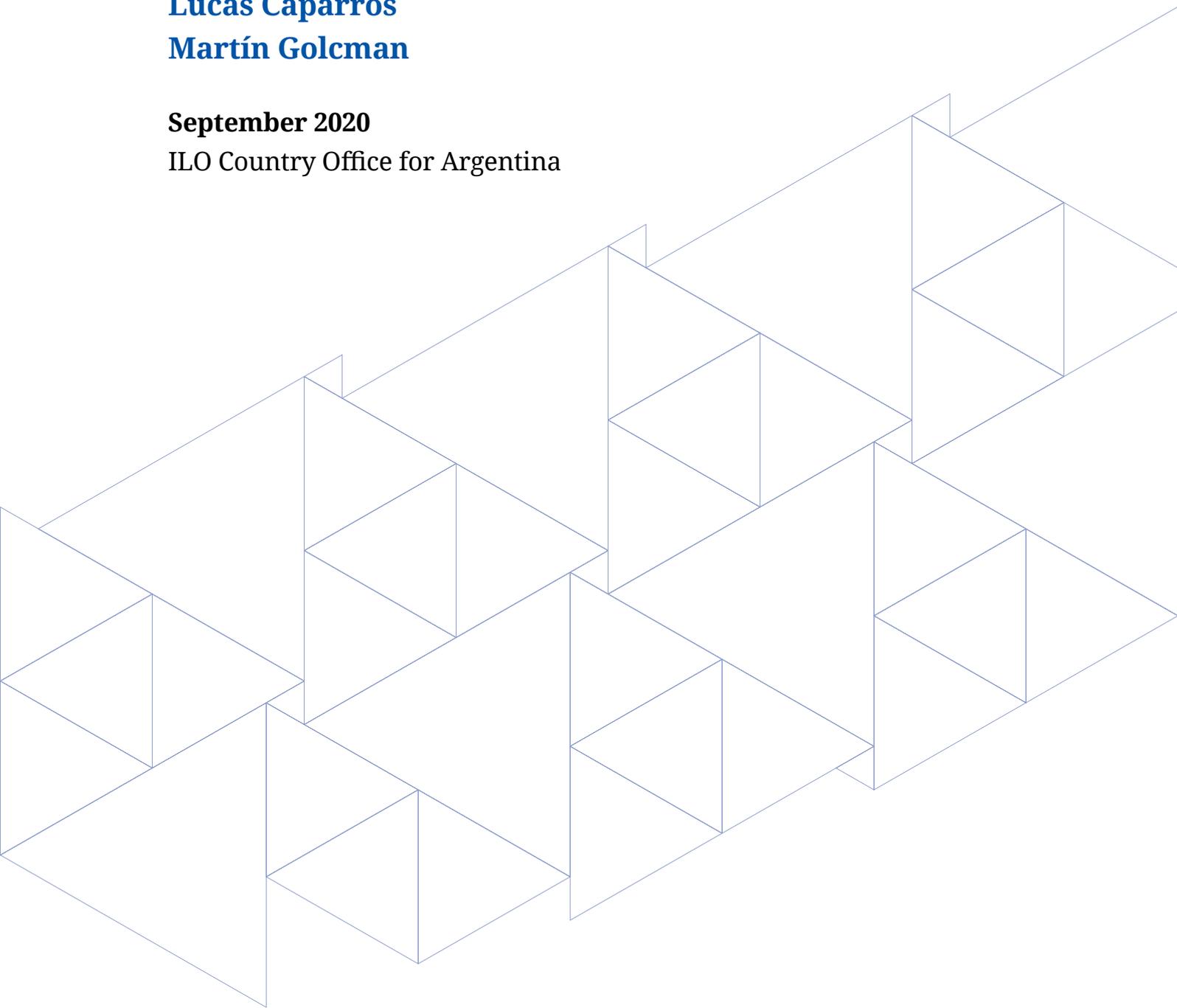


Legal analysis of labour relations in delivery services through digital platforms in Argentina

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ILO Country Office for Argentina





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The phenomenon of delivery services through digital platforms has spread in recent years in Argentina. Even though this new and growing arrangement competes with traditional business models, it represents an opportunity to expand the market for enterprises that did not previously have these channels for delivering their products to customers' homes.

The business model is a form of outsourcing of the delivery or distribution service, but it also provides access to a new sales channel through digital platforms. And it all takes place with little or no capital investment, without having to hire personnel and without requiring experience in IT solutions, among other advantages.

Despite the fact that the most well-known and developed multinational platforms have taken root in Latin America, regulations on the activity itself are scarce. And even less, there are no specific regulations that deal with the labour issues of couriers of digital delivery platforms, whose service would be included under the classification of “manual labour of riders performed offline but managed online” or “crowdwork offline”.

While from the employment perspective there is great flexibility for accessing this type of work, platforms nevertheless contract couriers under the self-employment arrangement. Therefore, platform workers are legally classified as self-employed workers (under different names, such as “partners” or “contractors”), and they are consequently excluded from the scope of application of heteronomous labour standards that are designed and created to oversee labour performed as an employee. Moreover, these workers are required to register under the simplified scheme for small contributors called “*monotributo*”, for which the workers are liable. These self-employed workers therefore cannot access social security benefits such as unemployment insurance, justifiable remunerated sick leave or compensation in the event of termination of the employment contract due to the complete disability of the employee.

Couriers are responsible not only for providing the vehicle but also for covering the fuel and insurance expenses, in addition to obeying traffic rules and obtaining the safety equipment and the necessary authorization for the use thereof. The person who provides the service is also responsible for obtaining and using helmets or reflective vests and all other safety elements required for a bicycle or motorcycle or for personal safety. When such equipment is given out by the enterprise in question, the cost is charged to the courier. Moreover, couriers must have and assume the cost of a mobile device that is compatible with the application used by each enterprise and that includes a mobile service plan for sending and receiving information pertaining to the geolocation and data of each service. Couriers must also pay for insurance, fees and taxes.

Platforms use a control and supervision system that allows the enterprise or the person who uses the service to rate couriers. Thus, a better rating on some platforms will, for example, allow a courier to gain access to certain kinds of orders that have higher profit margins, or a courier could establish their preferred schedule for making deliveries. Conversely, if a courier rejects orders on several occasions, or does not connect to the application during the pre-established hours or does not deposit the accumulated money on time, then the courier could be blocked from the application for a certain period of time. The maximum penalty is the removal of a courier from the online platform, without any right to lodge a complaint or seek compensation.

Regarding labour law, the question is posed as to whether this type of activity could be framed as an employment relationship. In this regard, couriers are repeatedly classified as self-employed and independent, and platforms are described as mere tech enterprises acting as intermediaries between the courier and the user. This represents a process of “flight from labour law”, given that these enterprises are eluding (or seeking to elude) an accumulation of obligations that, as they argue, would prevent them from continuing to offer a low-cost service.

Given the absence of specific regulations on providing delivery services through digital platforms, Recommendation No. 198 of the ILO is one of the few international instruments that could be effective at correctly classifying the relationship according to which a server and a platform are joined, following a few classic indicators that are therein proposed. On the one hand, there are indicators of an employment relationship, such as the fact that the work is carried out according to the instructions and under the control of another party; involves the integration of the worker in the organization of the enterprise; is performed solely or mainly for the benefit of another person; must be carried out personally by the worker; is carried out within specific working hours or at a workplace specified or agreed by the party requesting the work; etc. On the other hand, there are indicators of economic dependence, such as periodic payment of remuneration to the worker; the fact that such remuneration constitutes the worker’s sole or principal source of income; recognition of entitlements such as weekly rest and annual holidays, among others.

In Argentina, in the case of platforms that acknowledge an employment relationship with couriers, the consideration for the services provided must be governed by the Employment Contract Act (LCT) and Collective Bargaining Agreement (CCT) No. 722/2015 for the courier and delivery activity. These employees have union representation through the Union Association of Messenger and Service Motorcyclists, which, together with business representatives of the sector, agreed on said CCT No. 722/2015. It therein establishes certain benefits (including a workday scheme, an index-linked salary, the reimbursement of expenses and issues related to road safety or the issuance of apparel, among others), in addition to certain obligations (such as having a driving licence and the proper documentation for a motorcycle, including an insurance policy in the case of a personal vehicle; obeying traffic and roadway rules; etc.).

While the debate over how to protect those who provide services on delivery platforms is just beginning in Argentina, a few legal policy options could be posed. One of them would be to opt for labour regulations, thereby considering that the Employment Contract Act was drafted based on the classic link of dependence: a full-time, open-ended employment contract in service to a single employer. Apart from that, schedule flexibility, simultaneous work for more than one digital platform, online reputation (and its consequences), the use of technological tools for executing the job and the conditions for accessing remuneration, among other matters, are not expressly referenced in the general statute.

It is also important to reflect upon the necessary acknowledgement of the rights of workers on delivery service platforms to organize, to collectively bargain and to strike. This would mean modifying the Union Associations Act of Argentina, thereby expanding the possible field of representation beyond workers in an employment relationship. Collective bargaining, by definition, would be the indicated instrument for introducing improvements in this type of labour relation due to its adaptability, due to its flexibility and because it is a highly valuable, “rapid regulatory response tool” due to the speed of events and of technological changes.

The critical state of the social security system in Argentina means that its efficiency and viability should be constantly revised and evaluated. Regarding the activity performed by delivery couriers through digital platforms, which is characterized by a fragmentation of the time during which services are provided (connection/disconnection to/from the application), it is inevitable that the wages and the consequent contribution to social security will also be fragmented. In any event, the changes in how work is being performed make it necessary to rethink alternative instruments related to protection and the financing of social security for those who perform these tasks.

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