

## Croatia

# Algorithmic management

<b>Phase</b>	Labour law
<b>Native name</b>	Labour Act
<b>Type</b>	Algorithmic management
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## Article

Labour Act OG 151/22 and 64/23 Article 221a-221p

## Description

LAST UPDATE 2023 - THIS CONTENT WILL NOT BE UPDATED

The Labour Act in Article 221a-221p regulates work performed using digital labour platforms, defines the terms and prescribes special rights and obligations arising between the employer and the worker, prescribes a minimum level of rights and working conditions when such work is performed by other natural persons and the rights and responsibilities of digital labour platforms in order to ensure their transparent work. According to Article 221b, work performed using digital labour platforms is payable work performed by a natural person, on the basis of a contractual relationship, for a digital labour platform or for an aggregator using digital technology or remotely, using electronic means (website, mobile application, etc.) or directly at a specific location between participants in a particular job.

Digital labour platform is defined by Article 221c, as a natural or legal person who provides services provided at the request of the recipient of the service using digital technology, within the framework of the organization of work in which natural persons perform work remotely using electronic means or directly at a specific location. An aggregator is a natural or legal person who performs the activity of representation or intermediation for one or more digital labour platforms referred to in paragraph 1 of this Article. Article 221d stipulates that the digital labour platform is the employer to the worker who performs the

work personally, using the digital labour platform. If the aggregator is an employer to the worker, the digital labour platform is jointly and severally liable for the obligations which that aggregator, as its market intermediary, has towards the worker it employs to perform work for the digital labour platform. A digital labour platform may be released from joint and several liability if it proves that an aggregator registered under a special regulation and with which it has concluded a contract duly fulfils the obligation to register for workers' pension and health insurance, that it regularly covers the cost of workers' salaries and that it has no established tax debt.

The digital labour platform may, before concluding a contract with the aggregator, or once a month during the duration of that contract, request from the aggregator:

- a confirmation by the competent tax body of the absence of the tax debt of the aggregator
- a statement by the aggregator that he or she has registered for compulsory pension and health insurance for all workers in accordance with a special regulation
- proof that the aggregator regularly pays the total cost of workers' salaries.

A worker who performs work using a digital labour platform according to Article 221e is a natural person who, on the basis of an employment contract, performs work for a digital labour platform or for an aggregator in an employment relationship. Other persons who perform work using a digital labour platform are natural persons who, on the basis of a contractual relationship that did not arise from the conclusion of an employment contract, personally perform work for a digital labour platform or for an aggregator.

Rights and obligations of the employer are defined by Article 221g. Obligations include to a) acquaint the worker with the organization of the work of the digital labour platform and the manner of decision-making in the automated management system; b) ensure the availability and transparency of information on work performed using digital labour platforms; c) appoint an authorized person to supervise the safety and workload of workers who perform work using digital labour platforms; d) appoint an authorized person to conduct the procedure of reviewing decisions made in the automated management system and decide on them at the request of the worker. The employer among other obligations should also ensure the possibility of establishing professional communication with other workers and participants in the business process, as well as the employer and authorized persons of the employer and shall enable the worker to become acquainted with the manner in which he or she will assign work or work tasks, supervise the worker and evaluate his or her work.

Prior to the commencement of work performed using the digital labour platform, the employer referred to in Article 221d, paragraph 1 of this Act shall be obliged to enable the

worker to get acquainted with all rights arising from the employment relationship, in particular information related to access to work and work tasks, working time and working conditions, occupational health and safety, the possibility of promotion and training, and decisions related to the calculation and payment of salaries and compensation.

Obligation of human supervision in an automated management system to protect the health and safety of workers are specified by Article 221h. Thus, the employer shall assess the risks of work and their impact on the health and safety of workers who perform work using a digital labour platform and shall not allow work intensity that endangers the physical or mental health of workers who perform work using a digital labour platform. A worker who considers that his or her right to health and safety at work has been violated due to circumstances arising from the use of a digital labour platform shall be entitled to request from the employer the protection of his or her right, ie., a written explanation and review of a particular measure or decision.

Article 221i specifies the obligation of human supervision in monitoring work and decisions made in the automated management system. Consequently, a worker who considers that a decision made in an automated management system, in particular a decision regarding access to work tasks, working time, the possibility of promotion and training, and a decision regarding the calculation and payment of salary and compensations violates his or her right from employment relationship, shall be entitled to request from the employer the protection of his or her rights within the deadlines prescribed in Article 133 of the Labour Act.

Article 221j deals with protection of privacy and processing of personal data of workers working using a digital labour platform. Thus, the digital labour platform and aggregator shall not process data on private conversations, on the emotional or psychological state of the worker, on the health of workers, except in cases provided for by the regulation on the protection of personal data and collect personal data during the period in which the worker does not perform work or offer it.

Article 221k stipulates the Obligation to establish a channel for professional communication with other workers and employers and third parties in the business process, while Article 221l specifies mandatory content of a written employment contract for work through a digital labour platform.

Presumption of the existence of an employment relationship in work performed using a digital labour platform is defined by Article 221m. If a digital labour platform or aggregator enters into a contract with a natural person for the performance of work using a digital labour platform that, given the nature and type of work and the authority of the digital labour platform or aggregator, has the characteristics of the work for which the

employment relationship is concluded, it is considered that such digital labour platform or such aggregator, as an employer, entered into an employment contract with the worker, unless it is proven otherwise. The facts on the basis of which the existence of an employment relationship may be presumed is:

- personal performance of a payable work;
- giving orders and instructions for the performance of work to a natural person, within the framework of the organization of work and subordination of work;
- limiting the freedom to refuse to execute orders or making such freedom subject to sanctions or other measures,
- determining in detail the time, place and manner of performing the work of a natural person, regardless of whether he or she uses his or her own means of work ;
- supervising the performance of work and monitoring the effectiveness of a natural person, in order to evaluate his or her work and the possibility of promotion; and
- prohibiting the conclusion of transactions for one's own or someone else's account by using the services of other platforms.

The burden of proof is on that digital labour platform or on the aggregator that disputes the possible related legal presumption. A natural person who considers that he or she is not a worker within the meaning of this Act may challenge the legal presumption of the existence of a mentioned employment relationship, whereby the digital labour platform and/or the aggregator, is obliged to provide all the necessary information for the purpose of proving and for the proper resolution of the initiated procedure.

Article 221n determines that the presumption of the existence of an employment relationship does not apply to a natural person who has not achieved income in the amount of more than 60% of the gross amount of the three-monthly minimum wages determined by a special regulation through work through digital labour platforms in a single quarter of the calendar year. The digital labour platform or aggregator shall carry out a verification from the competent body which shall, through the E-Tax Administration, keep official records of all payers and of paid income in order to obtain evidence of the state of paid income from which the second income generated by the natural person to whom it assigns work through digital labour platforms is determined.

Rights and working conditions of other persons working on digital labour platforms are defined by Article 221o. It stipulates that the digital labour platform or aggregator shall contract accident insurance and liability insurance for the person if the contracted activities are performed by participating in traffic by a means which, in terms of road traffic safety regulations, are considered a vehicle and which is not subject to the obligation of registration. The mentioned person referred is entitled to the protection of rights in accordance with the established contractual relationship with the digital labour platform

or aggregator.

Finally, Article 221p defines records of work performed using digital labour platforms.

## Commentary

Under the Act, platform work is defined as work performed by a natural person through digital technology (either on-site or remotely via electronic means, such as internet pages or mobile applications) for remuneration, and for a digital work platform or an aggregator. In this context, the Act recognizes both the situation where a platform worker is in a direct contractual relationship with a digital work platform and the situation where an aggregator acts as an intermediary between a digital work platform and a platform worker. The existence of aggregators in the market is not a novelty, as many platform workers are employed by companies established solely for the purpose of intermediating between workers and the platform. What is new, however, is that under the Act the digital work platform will be jointly liable with the aggregator for all obligations the aggregator has toward the employees who perform work for the digital work platform - unless the platform acquires, on a quarterly basis, pre-defined documents evidencing, among others, that the aggregator has no outstanding tax debts and that the aggregator regularly pays a salary to its employees.

One of the problems that the Act is also trying to solve is employee misclassification. It has been recognized that, in practice, platform workers are often engaged on the basis of a contract other than an employment agreement, although the nature and circumstances of their work are more akin to an employment relationship. To this end, the Act provides a non-exhaustive list of factors that are indicative of an existence of an employment relationship with either a digital work platform or an aggregator, regardless of the type of contract in place.

The list of such factors includes, for example, limiting the freedom of the worker to refuse performance, specifying the time, place, and manner for the performance of work, etc. By way of exception, a platform worker will not be considered an employee - even if all statutory factors indicative of the existence of an employment relationship are met - if the platform worker earns less than 60% of three monthly minimum gross salaries within each quarter by working through a digital work platform. To put it in perspective, this means that if a worker earns less than about EUR 1,300 within Q1 of 2024, they will not be considered to be an employee of the digital work platform or an aggregator, unless explicitly contracted otherwise. It will be interesting to see whether the platform algorithms will take this income criterion into account when allocating work to its platform workers.

## Additional metadata

<b>Cost covered by</b>	None
<b>Involved actors other than national government</b>	National government
<b>Involvement (others)</b>	None
<b>Thresholds</b>	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

## Sources

- [Labour Act OG 151/22 and 64/23](#) ~~~ [Legal regulation of platform work](#) ~~~ [Regulation of digital platform work](#) ~~~

## Citation

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