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THE DETERMINATION OF THE CORRECT EMPLOYMENT STATUS OF PERSONS PERFORMING PLATFORM WORK UNDER EUROPEAN UNION LAW AND LESSONS FOR VIETNAM

A DETERMINAÇÃO DO STATUS DE EMPREGO CORRETO DAS PESSOAS QUE EXERCERAM TRABALHO EM PLATAFORMAS, AO ABRIGO DA LEI DA UNIÃO EUROPEIA E LIÇÕES PARA O VIETNÃ

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ABSTRACT

Objective: This article analyzes Directive (EU) 2024/2831 on determining the employment status of platform workers in the European Union, aiming to extract regulatory lessons applicable to the Vietnamese legal framework, particularly in light of the ongoing labor law reforms.

Method: The research adopts a qualitative methodology, based on documentary analysis and literature review. It interprets EU legislation, court rulings, and compares them to the current Vietnamese regulatory context.

Results: The study highlights Vietnam's lack of clear legal provisions regarding platform workers' employment status. It shows how the EU directive introduces a legal presumption of employment under certain conditions, shifting the burden of proof to digital platforms.

Conclusion: The paper concludes that Vietnam must reform its labor legislation to regulate platform work, by introducing legal definitions, employment classification criteria, presumptions of employment, and basic social protection mechanisms.

Keywords: Vietnam; The European Union; Foundational work; Sharing economy.

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RESUMO

Objetivo: O artigo busca analisar a Diretiva (UE) 2024/2831 quanto à determinação do status de emprego de trabalhadores de plataformas digitais na União Europeia, com o intuito de extrair lições aplicáveis ao contexto jurídico vietnamita, especialmente diante das reformas em curso na Lei do Trabalho do país.

Método: A metodologia é qualitativa, baseada em análise documental e revisão bibliográfica. O estudo centra-se na interpretação da Diretiva europeia, decisões judiciais relevantes e sua comparação com o arcabouço normativo atual do Vietnã.

Resultados: O artigo identifica a falta de clareza e de regulamentação no Vietnã quanto ao status trabalhista de trabalhadores de plataformas digitais. Demonstra que a Diretiva europeia propõe uma presunção legal de vínculo empregatício em determinadas condições, transferindo o ônus da prova às plataformas.

Conclusão: O estudo conclui que o Vietnã precisa atualizar sua legislação trabalhista para abranger trabalhadores de plataformas digitais, incluindo critérios para classificação do vínculo empregatício, definição legal, presunção jurídica e mecanismos de proteção social.

Palavras-chave: Vietnã; União Europeia; Trabalho fundamental; Economia compartilhada.

1. INTRODUCTION

The digitalization of the economy has created a temporary workforce that can be described as part-time, temporary, and flexible workers who work through digital platforms (Yildirmaz, A.; Goldar, M.; Klein, S., 2020). Platform work is done by individuals through the digital infrastructure of digital labor platforms that provide services to their customers.

By reviewing the literature, some researchers have pointed out the problems faced by workers through technology platforms, including: (1) Lack of protection like traditional workers; (2) Misclassification of employees as employees or independent contractors (Baber, A., 2024); (3) Lack of social protection policies; (4) The precarious nature of the job; (5) Failing to ensure the basic rights of employees; (6) Lack of integrated social and work models; (7) Occupational safety; (8) Low rate of unionization; (9) Lack of protective labor laws; (10) Weak regulation and protection; (11) Labor relations and labor rights; (12) Labor and social protection; (13) Organizing new work; (14) Complexity in transnational business models; (15) Labor rights and

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legal issues (Aigbe, F.; Aigbavboa, C.; Aliu, J.; Amusan, L., 2025). In particular, the lack of protection and misclassification of labor conditions are the two leading issues that give rise to the need for a regulatory law to protect basic workers through accurate classification of their working conditions.

Grassroots labor has thrived in European countries, according to European Council statistics, in 2024, in European countries, more than 28 million people work through one or more digital labor platforms. By 2025, that number is expected to reach 43 million people, and there are currently about 500 active digital labor platforms. In particular, many digital labor platforms are operating in every European country. The growth of the platform economy is illustrated by the fact that between 2016 and 2020, revenues in the platform economy increased almost 5 times, from an estimated 3 billion euros to about 14 billion euros. The largest revenue is estimated to come from the delivery and taxi service sectors (The Council of the EU and the European Council, 2025).

Directive (EU) 2024/2831, adopted by the European Parliament on October 23, 2024, is a thorough drafting and discussion process to improve working conditions in foundational work and support the sustainable development of digital labor platforms in the European Union (EU). Directive (EU) 2024/2831 marked a transformational step in the management of the operation of digital platforms, published in the EU Official Gazette on November 11, 2024. Effective from December 1, 2024, and the compliance deadline for member states is December 2, 2026, one of the important contents of the Directive is to accurately determine the employment status of workers through digital platforms.

In Vietnam, the draft of the 5th amended Employment Law in 2024 introduced the concept of workers without labor relations and added them to the subjects protected by the Employment Law and social security policies. This new group of subjects according to the report attached to the draft of the amended Employment Law, is aimed at the group of basic workers. However, in the draft of the 6th version of October 2024, this concept is excluded from the draft. The reason given is that the complex, inconsistent, and unstable nature of this new social relationship is suitable for inclusion in documents under the law (which can be amended and quickly replaced) and the application of the sandbox testing mechanism before being developed into a generally applicable law. Thus, the removal of this concept from the draft Law does not mean that there is no legislative orientation to protect them in Vietnam. Therefore, it is

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necessary to learn from international experiences, especially from advanced legislatures such as the European Union to draw lessons for Vietnam. The article studies the regulations on determining the employment status of workers through digital platforms according to EU law, specifically, Directive (EU) 2024/2831 is the main research document, from which the authors make recommendations for Vietnam.

2. OVERVIEW OF PLATFORM WORK UNDER EU LAW

2.1. Concept of foundational work

According to Clause 1, Article 2 of Directive (EU) 2024/2831, a digital labor platform means a natural or legal person providing a service that meets all of the following requirements: (i) it is provided, at least in part, at a distance by electronic means, such as using a website or a mobile application; (ii) it is provided at the request of a recipient of the service; (iii) it involves, as a necessary and essential component, the organization of work performed by individuals in return for payment, irrespective of whether that work is performed online or in a certain location; (iv) it involves the use of automated monitoring systems or automated decision-making systems.

This definition does not include service providers whose primary purpose is to exploit or share assets or through which non-professional individuals can resell goods. Thus, if the sharing economy is classified into 2 parts, including (1) capital base; (2) labor platform (Kristoffersson, E., 2019), then Directive (EU) 2024/2831 only regulates the sharing economy with a labor platform, that is, a provider is an employer of labor to provide services to customers through a digital labor platform. The rest of the digital platforms that provide connection services between property owners, asset use rights to share asset use rights, or sell and exchange assets on capital platforms are not subject to the scope of the Directive because these providers do not provide labor.

According to Point b, Clause 1, Article 2 of Directive (EU) 2024/2831, platform work means work organized through a digital labour platform and performed in the Union by an individual based on a contractual relationship between the digital labour platform or an intermediary, and the individual, irrespective of whether there is a contractual relationship between the individual or an intermediary and the recipient of the service.

It is too early to assess the full impact of the Directive, but the broad nature of the two definitions is likely to be disputed over the scope of the Directive. This may

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include the extent to which organizations other than those believed to operate in the self-employed economy (such as delivery and transport service applications) are likely to fall within the scope of this Directive.

Person performing platform work means an individual performing platform work, irrespective of the nature of the contractual relationship or the designation of that relationship by the parties involved.

Means any person performing platform work who has or is deemed to have an employment contract or an employment relationship as defined by the law, collective agreements or practice in force in the Member States with consideration to the case-law of the Court of Justice.

Intermediary means a natural or legal person that, to make platform work available to or through a digital labour platform: (i) establishes a contractual relationship with that digital labour platform and a contractual relationship with the person performing platform work, or (ii) is in a subcontracting chain between that digital labour platform and the person performing platform work.

As such, Directive (EU) 2024/2831 defines foundation work as any activity organized through a digital labor platform and carried out by a person in the EU to a third party. The term platform workers includes all people who work through the platform, regardless of the nature of the contractual relationship or how the parties involved describe this relationship (labor or self-employed/self-employed relationships). This means that both dependent employees and independent contractors will benefit from the Directive's protections in the future.

2.2. The complex nature of the foundation work

The foundation work develops rapidly with a complex nature, which can be generalized in the following characteristics:

Firstly, the foundation work is carried out in a variety of sectors and is characterized by a high degree of heterogeneity in: (i) the types of digital labor platforms, (ii) the sectors covered, (iii) the activities carried out, (iv) the profiles of the people who perform the foundation work.

Second, digital labor platforms coordinate platform work through algorithms. There are two types of platform work: (1) online platform work; (2) on-location platform work (European Sources Online, 2024, Section 5). The digital labor platform currently consists of (1) operating and deploying business models in a country; (2) Cross-border.

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Digitalization is changing the world of work, improving productivity and increasing flexibility, and it also brings some risks to employment and working conditions. Algorithm-based technologies, including automated monitoring systems and automated decision-making systems, have enabled the emergence and development of digital labor platforms. New forms of digital interaction and new technologies in the world of work, if properly managed and implemented, can create opportunities to access decent and quality jobs for those who traditionally do not have access to them. However, if left unregulated, they can also lead to technological surveillance, increasing power imbalances and a lack of transparency about decision-making, and posing risks to decent working conditions, health and safety in the workplace, equal treatment, and privacy.

Third, foundation work can lead to the unpredictability of working hours and can blur the line between labor relations and self-employment and the responsibilities of employers and employees. The misclassification of employment status will have consequences for those affected, because it has the potential to limit existing labor and social rights and lead to other problems in terms of competition, the country's tax base, etc.

Fourth, foundational work is growing rapidly, resulting in new business models and forms of employment that are sometimes not protected by existing protection systems. Although, foundation work can provide an opportunity to access the labor market more easily, earn extra income through secondary activities, or enjoy the flexibility of organizing working hours. At the same time, most people who do foundation jobs have other jobs or other sources of income and tend to be underpaid.

Fifth, when platforms operate in multiple member states or across borders, complicates the enforcement of applicable rules. Because: (1) it is often unclear where and by whom the platform work is done, especially for online platform work; (2) national authorities do not have easy access to data on digital labor platforms, including the number of people performing platform work, their employment status, and their working conditions.

2.3. The need to accurately determine the employment status of workers through technology platforms

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The need to accurately determine the working status of workers through digital platforms is an urgent prerequisite to achieve the purpose of improving their working conditions, the urgency is expressed through:

First, misclassification of employment status will have consequences for those affected, as it has the potential to limit existing labor and social rights. It also leads to an unequal playing field for businesses that properly classify their workers and have an impact on the labour relations systems of Member States, their tax bases, and the coverage and sustainability of their social protection systems. While such challenges are broader than foundation work, they are particularly serious and urgent in the foundation economy.

Second, there are many different judicial views between courts on the employment status of people working through digital platforms, so it is necessary to have uniform rules in this matter to ensure fairness. Court cases in some member states have pointed to the persistent existence of misclassification of employment status in certain types of platform work, especially in areas where digital labor platforms have a certain degree of direction and control. While digital labor platforms often classify people who work through them as self-employed or independent contractors, many courts have found that platforms exercise de facto direction and control over those people, often integrating them into their core business operations. As a result, those courts have reclassified people who are supposedly self-employed into workers employed by these platforms. Example:

In Hungary, in the case of a person who works as a business individual in Hngary, on December 13, 2023, the Hungarian Supreme Court (Curia) ruled on the classification of the labor relationship between a platform and a food delivery driver. This ruling is based on the Labor Code and the law on the concept of employment. This is the first ruling on Hungarian work, as well as in Central and Eastern Europe. Curia declares that the employee is in business (Case note: Hungarian supreme court (curia) decision of 13 December 2023). Curia Hungary has chosen the traditional approach by placing the obligation (recruitment and availability) at the center of the arguments. Thus, a missed opportunity to adapt the traditional employment test to the changing labor market and the reality of freelance employment (Tamás Gyulavári, 2024). Under international law and documents, the ruling raises some concerns. In European law, the classification is based on tests similar to those applied in this Hungarian case (Christina Hiessl, 2024), but the results are different in many countries.

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In the UK, the British Supreme Court declared Uber drivers to be workers. Uber was sued by two drivers, James Farrar and Yaseen Aslam, in the London Labour Court (UK). According to the indictment, all activities of the two drivers were controlled by Uber, which means they were hired by the company but did not receive basic workers' rights. Judge George Leggatt stated that the Supreme Court of England rejected Uber's appeal, and emphasized that the ruling was intended to protect "vulnerable individuals who have little or no say in their wages and working conditions". Accordingly, the court upheld the rulings issued by the lower courts in 2016, 2017, and 2018 respectively. This ruling supports the group of 20 Uber drivers affirming that they are entitled to employee benefits such as paid leave, breaks, etc. (Nguyen Hang, 2021).

In the Netherlands, the Amsterdam regional court ruled in favor of the Dutch Federation of Trade Unions (FNV), which sued on behalf of Uber drivers, demanding that Uber treat them as employees and provide them with the same salaries and benefits as employees of other taxi companies. The ruling emphasized: "The legal relationship between Uber and drivers meets all the characteristics of a formal employment contract" (Chanh Tai, 2021).

Third, foundation work can provide opportunities to access the labor market more easily, earn additional income through secondary activities, or enjoy the flexibility of organizing working hours that bring many benefits to the community. Furthermore, the foundational work is growing rapidly, resulting in new business models and forms of employment that are sometimes not protected by existing protection systems. Without proper legal frameworks, they risk increased oversight, power imbalances, and opacity of decision-making, and harm the working conditions, health, equal treatment, and privacy of workers on these platforms. Therefore, it is important to accompany that process with adequate safeguards for those who do the foundation work, regardless of the nature of the contractual relationship.

Fourth, accurately determining the employment status of workers through technology platforms is a must to implement labor and human rights commitments in the European Union. Concrete:

(1) To implement Article 3 of the Treaty of the European Union (TEU), the objectives of the Union include, among other things, the promotion of the well-being of the people and the endeavor for the sustainable development of Europe based on,

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among other objectives, balanced economic growth and a highly competitive social market economy, towards full employment and social progress.

(2) To implement Articles 8, 12, 16, 21, 27, and 31 of the Charter of Fundamental Rights of the European Union. Article 8 of the Charter provides that everyone has the right to the protection of personal data concerning them. Article 12 of the Charter provides that everyone has the right to freedom of association and associations at all levels. Article 16 of the Charter recognizes the right to freedom of business. Article 21 of the Charter prohibits discrimination. Article 27 of the Charter protects the right to information and consultation of employees within the enterprise. Article 31 of the regulation provides for the right of all workers to fair and just working conditions, respecting their health, safety, and dignity (European Parliament, 2000).

(3) To implement the fifth principle of the European Pillar of Social Rights, which commits that regardless of the type and duration of the labor relationship, workers have the right to fair and equal treatment in terms of working conditions, access to social protection, and training; that, according to the law and collective agreements, the flexibility necessary must be ensured so that employers can quickly adapt to changes in the economic context; that innovative forms of work that ensure quality working conditions must be promoted; that entrepreneurship and self-ownership must be encouraged; that occupational mobility must be facilitated; and that labor relations that lead to precarious working conditions must be prevented, including the prohibition of the abuse of atypical contracts.

(4) Principle 7 of the European Pillar of Social Rights, stipulates that workers have the right to be informed in writing at the beginning of work of their rights and obligations arising from the employment relationship. Before any dismissal, the employee has the right to be notified of the reason and to be granted a reasonable notice period and the right to access effective and fair dispute resolution and, in the case of unreasonable dismissal, the right to compensation, including adequate compensation.

(5) Principle No. 10 The European Pillar of Social Rights stipulates that workers have, among other rights, the right to a high degree of protection of their health and safety at work and the right to the protection of their data in the context of employment.

Therefore, it is necessary to determine the exact status of workers through technology platforms to better protect workers on digital labor platforms by clarifying their legal

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status in particular and ensuring they enjoy the same social rights as traditional workers.

3. CONTEXT AND REGULATIONS ON DETERMINING THE EMPLOYMENT STATUS OF EMPLOYEES THROUGH DIGITAL PLATFORMS UNDER EU LAW

Regarding the determination of the employment status of workers through digital platforms, from the first draft in 2021, through many revised versions, the discussion and adoption process was not smooth with many mixed opinions, and until 2024 Directive (EU) 2024/2831 was adopted. However, unlike the proposal of the Council of the European Union from June 2023, the new version of the Directive, which is agreed upon, does not include a list of specific criteria that must be met to trigger the employment assumption. Now, it is only stipulated that the labor relationship will be assumed when facts show that control and direction under national law are found to exist between the digital and individual labor platforms. Each member state will decide how to implement the assumption and the criteria will be used to determine the sufficient control and direction of the digital labor platform to make assumptions about labor relations.

Regarding the determination of employment status, Directive (EU) 2024/2831 specifies the following:

Firstly, it is required to develop and complete a national law on procedures for determining employment status and obligations of employers when labor relations are established. According to Article 4 of Directive (EU) 2024/2831, determining employment status accurately, it is regulated:

(1) States Parties must have appropriate and effective procedures in place to verify and ensure the determination of the correct employment status of those who perform work on the platform, to determine the existence of an industrial relationship as defined by law, collective agreements, or practices in force in member states, taking into account the law of the Court of Justice, including through the application of the legal presumption of industrial relations.

(2) The determination of the existence of industrial relations will be guided primarily by events related to the actual performance of work, including the use of automated monitoring systems or automated decision-making systems in the

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organization of foundational work, regardless of the relationship specified in any contractual agreement may have been agreed between the parties involved.

(3) When an employment relationship is established, the party or parties responsible for the employer's obligations must be clearly defined according to the national legal system.

Thus, the procedures for determining the employment status of people doing basic jobs are prescribed by the laws of member countries. The determination of the existence of labor relations is based primarily on facts related to the actual performance of work, including the use of automated monitoring systems or automated decision-making systems in the organization of foundational work, regardless of the relationship specified in any contractual agreement may have been agreed between the parties involved. If it is determined that there is an industrial relationship, the obligations of the employer must be clearly defined according to the national legal system. Member States are obliged to formulate national laws with 2 contents: (1) procedures for accurately determining employment status, which must comply with the Law of the Court of Justice and legal presumption according to this directive; (2) Obligations of the employer when the employment relationship is established.

Second, build a legal assumption in national law on the conditions for determining the labor relationship, which the digital labor platform is obliged to prove if it wants to refute the legal assumption of the labor relationship.

According to Article 5 of Directive (EU) 2024/2831, legal assumptions, and regulations:

(1) Labor relations are established when there are events indicating direction and control, are built on national laws, collective agreements, or practices in force in the Member States, and take into account the case law of the Court of Justice. When a digital labor platform seeks to refute a legal presumption that the digital labor platform must demonstrate that the contractual relationship in question is not an established employment relationship by definition.

(2) The Member States will establish a legal assumption that can effectively refute the employment relationship that creates procedural convenience for the benefit of those who perform work on the platform. The legal assumption must ensure not to increase the burden of requirements on those who perform work on the platform or their representatives in the procedures for determining their correct employment status.

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(3) Scope of application of legal presumption: used in all relevant administrative or judicial procedures and does not apply to procedures related to taxation, criminal, and social security.

(4) The person who performs the work on the platform, their representative has the right to initiate procedures to determine the correct employment status of the person performing the work on the platform.

(5) The national authority has the right to initiate actions or procedures to determine the correct employment status of a foundation worker when it is assumed that they have been misclassified.

(6) The validity of the legal presumption begins on December 2, 2026.

Third, measures to assist member states in establishing a framework of measures to implement legal assumptions. According to Article 6 of Directive (EU) 2024/2831, which provides for a framework of support measures Member States will establish a framework of support measures to ensure the effective implementation and compliance with legal assumptions. Concrete:

(1) Develop appropriate guidance, including in the form of concrete and practical recommendations, for digital labor platforms, people who perform work on the platform, and social partners to understand and implement legal assumptions, including procedures related to rejecting such assumptions;

(2) Develop guidelines and establish appropriate procedures for national authorities following national laws and practices, including cooperation between national authorities, to proactively identify, target, and monitor digital labor platforms that do not comply with the applicable rules for identifying the exact employment status of those who perform work on the platform;

(3) Provide effective control and inspection measures conducted by national authorities, following national legislation or practice, and in particular, provide, where appropriate, control and inspection measures for specific digital labor platforms when the existence of labor relations between the platforms and a person who performs the work on the platform has been identified by the national authority, and ensures that such controls and inspections are proportionate and non-discriminatory;

(4) Provide appropriate training to national authorities and provide technical expertise in the field of algorithm management so that such agencies can perform tasks.

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As such, the new regulations will address cases of misclassification of workers on the platform and facilitate the reclassification of those workers as employees, ensuring they have easy access to their rights as employees under EU law. The directive assumes that the foundation worker is an employee if certain conditions indicate direction and control (such as defined working hours or established remuneration). This shifts the burden of proof to platforms to prove workers' self-employment status, thus providing greater clarity and security to the rights of platform workers. Member States must set forth modalities of such legal presumption in their national laws. This assumption will make it procedurally easier for workers on the platform to legally determine their employment status. Legal assumptions about employment when there are events that indicate the control and direction of the platform, considering the possible labor, social security, administrative, and tax consequences arising from potential reclassification.

Contrary to initial expectations, there will be no standardized criteria in the EU to classify people working on the platform as employees. This means that member states can implement this assumption in different ways.

Most EU member states are now adopting a comprehensive and multi-factor approach to determining employment status in the context of each specific case. The absence of a more uniform and detailed approach to determining employment status under the Directive means that we will likely see different outcomes regarding the employment status of foundation workers depending on the member state in which the decision is made. Spain has established criteria to determine the employment status of foundation workers. However, this regulation applies exclusively to work on digital distribution or delivery platforms for all consumer products or goods following the 23rd additional article of the Act on the Consolidation and Approval of the Regulation of Workers (Ministry of Employment and Social Security, 2015), introduced by Act 12/2021, dated September 28, 2021 (Head of State, 2021). As of May 2023, in Portugal, there has been a set of criteria for determining employment status that applies to all digital platforms, according to Article 12-A of the Portuguese Labour Code 2023 (Portuguese Labour Code 2023).

Although it may seem lax, the EU's regulation on legal assumptions will still make it easier for foundation workers to declare that they are employees. This is in contrast to the current position where the individual often bears the burden of proving the existence of the employment relationship. Assuming employment means that the

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burden will fall on the digital labor platform to prove why the individual is not an employee of the platform and should instead be considered self-employed. It is worth noting that under the Directive, member states are only required to translate employment assumptions related to labour rights into national law and not procedures related to tax, criminal, or social security matters. However, member states can extend this assumption to these areas.

4. ISSUES OF DETERMINING LABOR STATUS IN VIETNAM AND RECOMMENDATIONS

4.1. The current situation of determining the labor situation in Vietnam

Currently, the workforce working through digital platforms exists and is growing in Vietnam. But in contrast to the existence and development of this new social relationship, Vietnam's legal system has not kept up with the adjustment. Mainly people working through technology platforms in Vietnam working in the field of transportation are technology vehicle drivers.

According to a report from Mordor Intelligence, the size of Vietnam's ride-hailing market is estimated at 1.17 billion USD in 2024 and is expected to grow to 3.19 billion USD by 2029 with a compound annual growth rate (CAGR) of 22.1% in the period 2024 - 2029 (Mordor Intelligence, 2024). According to statistics from the Vietnam General Confederation of Labor, there are currently about 200,000 technology drivers in the country, including motorcycles and cars, most of whom are between the ages of 25 and 35. But among them, only about 7% of people participate in social insurance (social insurance), moreover, they are voluntarily paying insurance. The vast majority of technology drivers still have no access to social security solutions (Dang Son, 2024). In fact, according to statistics from the Vietnam General Confederation of Labor, Grab's average income after deducting connection and gasoline fees is 318,000 VND/day, 7 million VND/month. In addition, drivers are also entitled to additional bonuses, subsidies, and support programs from Grab, but they are quite low and infrequently. Regarding the very stressful working hours, each driver works an average of 9.2 hours/day, with no holidays and no holidays and New Year holidays (Doan, C., 2022). Thus, motorbike taxi drivers are suffering a lot of disadvantages, an industry facing many risks and risks, but almost no one is allowed to participate in social insurance and health insurance (Ho Thi Thanh Truc, Hoang Xuan Son, 2024).

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The current legal situation determining the labor situation in Vietnam can be summarized as follows:

Firstly, there are no separate regulations on people working through digital platforms, no regulations on minimum rights, and no minimum welfare regimes for workers regardless of whether they have labor relations or not.

The Labor Code 2019 provides two related concepts: employees and workers without labor relations. Specifically: In clause 1, Article 3 of the Labor Code 2019, an employee is defined as a person who works for the employer as agreed, is paid a salary, and is subject to the management, administration, and supervision of the employer. Clause 1, Article 3 of the Labor Code 2019, a person who works without labor relations is a person who works not based on employment by labor contract.

Secondly, the relationship between the platform provider and the service provider is governed by the existing regulations on business cooperation contracts. The service provider is not recognized as an employee and does not have the rights of the employee. Article 504 of the Civil Code 2015 stipulates the cooperation contract as follows: (1) A cooperation contract is an agreement between individuals and legal entities on the mutual contribution of assets and efforts to perform certain jobs, mutual benefits, and joint responsibilities. (2) The cooperation contract must be made in writing. Clause 14, Article 3 of the Law on Investment 2020: "*A business cooperation contract is a contract signed between investors for business cooperation, profit sharing, and product division following law without establishing an economic organization*." For example, the contract between Grab and the driver is a business cooperation contract. Grab is the entity that has the legal right to use the ride-hailing and dispatching software to provide services, including but not limited to (i) car ride-hailing services (GrabCar/GrabTaxi), (ii) motorbike ride-hailing services (GrabBike), (iii) food ordering and delivery services, beverages or products from merchants (GrabFood/GrabMart), (iii) postal delivery/goods delivery service to the designated address (GrabExpress). Partners are individuals who have full civil capacity and wish to cooperate with Grab to provide services according to the needs of users, specifically: Partners participating in providing GrabCar or GrabTaxi services - 4-wheeled partners, partners participating in providing the rest of the services - 2-wheeled partners (Grab, 2024).

Thirdly, the rights of employees without labor relations have not been specifically regulated. In addition to general regulations, there are no specific

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regulations on the rights of this group of employees. Specifically: According to Clauses 1 and 2, Article 4 of the Labor Code 2019 on the State's policies on labor: (1) Ensuring the legal and legitimate rights and interests of employees and employees who do not have labor relations; encouraging agreements to ensure that employees have more favorable conditions than the provisions of the labor law; (2) apply some provisions of this Code to employees who do not have labor relations. According to Clause 4, Article 212, to develop mechanisms and institutions to support the development of progressive, harmonious, and stable labor relations; to promote the application of the provisions of this Code to persons working without labor relations; register and manage the activities of the organization of employees at the enterprise. The Law on Occupational Safety and Health 2015 stipulates that people who work without labor contracts have the right to work in conditions of occupational safety and hygiene facilitated by the State, society, and family to work in an environment of occupational safety and hygiene; receiving information, propagating, and educating about occupational safety and health; be trained in occupational safety and hygiene when doing jobs with strict requirements on occupational safety and hygiene; participate in and enjoy occupational accident insurance in a voluntary form prescribed by the Government. To lodge complaints, denunciations or initiate lawsuits following the law. At the same time, they must be responsible for occupational safety and hygiene for the work they perform following the law; ensure occupational safety and hygiene for relevant persons in the working process; notify local authorities to take measures to promptly prevent acts that cause occupational safety and hygiene.

The rights of employees without labor relations are drafted in the 5th revised Draft Employment Law but are no longer found in the 6th revised Draft Employment Law in October 2024. Draft version 5 has regulations on labor registration, which pay attention to workers who do not have labor relations to protect this group of workers based on grasping the situation of the free labor market. However, by the 6th draft version, there are no more of the above provisions.

Thus, currently, the new labor law regulations only focus mainly on employees working under labor contracts and having labor relations, for employees working without labor relations in terms of rights that have not been properly paid attention to (Bui Duc Nhuong, 2025).

Fourth, there are no regulations on the classification of employment status. Currently, it is only possible to infer the criteria for determining labor relations

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based on Clause 1, Article 3 and Clause 1, Article 13 of the Labor Code 2019. Specifically, labor relations are relations between parties with the following criteria: (1) having a paid employment relationship; (2) there is a contractual relationship; (3) There is management, administration, and supervision of one party over the other party.

In addition, the determination of labor relations can be drawn from the Court's recommendation on the classification and welfare of technology vehicle drivers in the Judgment in the case of Vinasun v. Grab. In the first-instance judgment in 2018 and the appellate judgment in 2020, the judgment of the courts at all levels adjudicating the case of Vinasun v. Grab, the first-instance court and the appellate court recommended the Vietnam Social Security agency and competent state agencies to: Consider the responsibility of Grab Limited Liability Company in fulfilling its obligations on social insurance, unemployment insurance, and health insurance for employees working for Grab following regulations (High People's Court, 2020). Thus, the court's view is that the relationship between Grab and the driver is an employment relationship.

Thus, it can be summarized that there are currently three main issues posed by the current legal provisions on the determination of labor relations. First, there are no regulations on people working through digital platforms, in the current labor classification, only employees and workers without labor relations, but people working through digital platforms can be employees, it is also possible that they are workers who do not have labor relations, depending on the case, so they cannot be classified into any group in the current classification. Second, the criteria for determination have not been clearly explained; there is no test to determine the labor status, and there are no specific regulations to enforce the regulation "*In case the two parties agree under a different name but there is content showing paid employment, salary and management, administration and supervision of one party, it is considered a labor contract*". Third, workers are divided into 2 types: (1) employees; (2) the employee does not have labor relations but the issues of rights and welfare of the employee without labor relations have not been specifically stipulated and therefore are not guaranteed. The current Vietnamese law also does not have regulations on minimum rights and minimum welfare regimes of employees regardless of whether they have labor relations or not, and therefore the group of people working without labor relations is suffering while this workforce is increasing in the digital economy. Thus, Vietnam needs to regulate people working through digital platforms and develop criteria and

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procedures for determining their employment status to classify and complete regulations on the rights of workers without labor relations to apply after classification.

4.2. Recommendations

First, Vietnam needs to define and add people who work through digital platforms to labor and employment laws and add this group to the group of people who need to be protected and ensure minimum labor rights and welfare, selective learning is the definition of the European Union, learning the concept of basic work, people doing basic work, however, the concept of "digital labor platform, it is necessary to change to specifically suit the digital labor platform" is an individual or legal entity providing responsive services all of the following requirements: (1) are provided, at least in part, remotely by electronic means, such as through a website or mobile application; (2) provided at the request of the recipient of the service; (3) it includes, as a necessary component, the organization of work performed by an individual in exchange for wages, regardless of whether such work is performed online or in a given location; (4) It includes the use of automated monitoring systems or automated decision-making systems. To avoid the overly broad concept that is likely to cause disputes over the scope of regulation, the concept should additionally exclude delivery and shipping service applications directly between the platform and consumers.

Second, learn from the experience of the European Union, in determining the employment status of workers through a digital platform through a test of the conditions that constitute industrial relations. Currently, the criteria for determining labor relations in our country are still general, and difficult to implement in practice even though regulations are paving the way for determining the nature of labor contracts even though they have other names according to Clause 1, Article 13 of the Labor Code 2019. According to the experience of European countries, it is very difficult to develop tests and procedures for determining the employment status of foundation workers because of the heterogeneous nature of the platforms and must follow the laws and social context of each country (Emanuele Menegatti, 2022). Therefore, to develop these regulations, it is necessary to thoroughly research and survey the current employment situation through digital platforms in Vietnam.

Third, learning from the experience of the European Union in making legal assumptions, requires businesses providing the platform to prove their employment status if they deny employment relations. The formulation of legal assumptions on the

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basis does not create a procedural burden for foundation workers. First of all, the specific guidance of Clause 1, Article 13 of the Labor Code 2019 is as follows: "In case the two parties agree under another name but have content showing paid employment, salary and management, administration and supervision of one party, it is considered a labor contract. The manager, executive, or supervisor who wants to deny this relationship is an employment relationship that is obliged to prove".

Fourth, develop sanctions for misclassification of employment status. Expand the scope from labor law, and employment law to social security law, tax law, and criminal law. In Germany, it is a crime to deliberately misclassify and fail to pay contributions and social security taxes (Christian Koops and Ludmilla Maurer, 2021).

5. CONCLUSION

The workforce working through digital platforms is an inevitable force in the process of digitizing the economy. This force is increasingly large all over the world, including Vietnam. The lack of regulations on this group of workers, especially the regulation on determining their employment status in Vietnam, not only does not protect workers through technology platforms but is also related to macro management issues of the labor market. The European Union's experience in determining employment status needs to be studied to develop and improve legislation on this issue in Vietnam. Specifically, we need to learn legal concepts and assumptions about determining the employment status of workers through digital platforms.

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