

CRITICAL ISSUES IN THE PHILIPPINE DIGITAL ECONOMY

LABOR DIMENSION

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Virtual Book Launch

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WHO WE ARE

The Institute for Labor Studies

an attached agency of the
Department of Labor and
Employment

conducts policy research on all areas
of labor administration

adheres to decent work as
overarching framework toward
achieving development, reducing
poverty, advancing equity and
dignity and promoting well-being

WHAT WE DO



Research

in support of evidence-based policy-making



Technical Assistance

in support of policy advocacy, program implementation and legislative advocacy



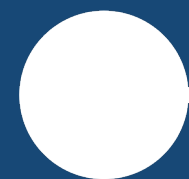
Advocacy & Publication

to promote policies, improve awareness/understanding on or compliance with labor and employment laws/rules/regulations/policies/programs, forge or strengthen partnerships/collaboration

www.ils.dole.gov.ph

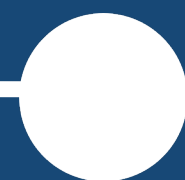
PAPERS

2019



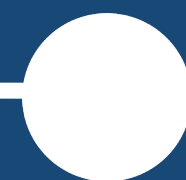
Reshaping Work: Opportunities and Challenges in Platform Work

2020



Exploring Telecommuting as the New Work Arrangement: Rapid Assessment of Telecommuting Practices Prior and During the Covid-19 Pandemic

2021

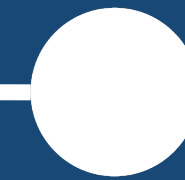


Platform Work and COVID-19: A Descriptive Analysis on Nature and Work Conditions of Food and Service Delivery Workers

Industry Analysis on Work-From-Home Implementation During Community Quarantine

Regulating Private E- Recruitment for Local Employment: An Ex-Ante Regulatory Impact Assessment

2022



Policy Notes on Extending Protection for Digital Labor Platform Workers

Expanded Analysis of the Decisions of Foreign Tribunals on the Determination of Employer-Employee Relationship in the Platform Industry

Study on the Determinants of Adopting Hybrid Work Arrangement: The Cases of IT-BPM, Accounting & Finance, and Customer Service Industries

POLICY CONTEXT



**Constitutional
guarantees**



**Salient Labor
Code provisions**



**Regulatory
framework**



Jurisprudence



Constitutional guarantees

ARTICLE XIII

Section 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law.

They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.



POLICY CONTEXT

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Labor Code provisions

Labor standards/OSH standards

Contracting & Subcontracting

Security of tenure

Visitorial and enforcement powers

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Labor Code provisions

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Visitorial and enforcement powers

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Regulatory framework

*DOLE Labor Advisory NO 14, Series of 2021
Work Conditions of Delivery Riders in Food Delivery and
Courier Services*

III. TEST OF EMPLOYMENT RELATIONSHIP. - The relationship between the delivery riders and digital platform company shall be based on the principle of primacy of facts by applying the following:

- a. Four-fold test;
- b. Economic reality test; and
- c. Independent contractor test

taking into particular account the flexibility of work including working time, control through technology and use of equipment and other inputs.



POLICY CONTEXT

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Regulatory framework

*DOLE Labor Advisory NO 14, Series of 2021
Work Conditions of Delivery Riders in Food Delivery and
Courier Services*

IV. WORKING CONDITIONS. - All delivery riders who are deemed employees are entitled to the following minimum benefits, as provided for in the Labor Code, as renumbered, and other labor laws, as may be applicable:

- a. Minimum wage;
- b. Holiday pay;
- c. Premium pay;
- d. Overtime pay;
- e. Night shift differential;
- f. Service incentive leave;
- g. Thirteenth-month pay;
- h. Separation pay;
- i. Retirement pay;
- j. Occupational safety and health standards;
- k. Social benefits xxx
- l. Other benefits under existing laws.



Regulatory framework

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Work Conditions of Delivery Riders in Food Delivery and
Courier Services*

IV. WORKING CONDITIONS. - All delivery riders who are deemed employees are entitled to the following minimum benefits, as provided for in the Labor Code, as renumbered, and other labor laws, as may be applicable:

xxx

All delivery riders who are deemed employees shall also enjoy the right to security of tenure, self-organization, and collective bargaining.

POLICY CONTEXT





Regulatory framework

*DOLE Labor Advisory NO 14, Series of 2021
Work Conditions of Delivery Riders in Food Delivery and
Courier Services*

IV. WORKING CONDITIONS. - All delivery riders who are deemed employees are entitled to the following minimum benefits, as provided for in the Labor Code, as renumbered, and other labor laws, as may be applicable:

XXX

The terms of conditions of engagement of delivery riders who are deemed independent contractors or freelancers shall be governed by their respective contract or agreement with the digital platform company, which stipulates for the following provisions, including but not limited to:



XXX

POLICY CONTEXT

JURISPRUDENCE



"Our laws and jurisprudence recognize two types of contractors: legitimate job contractors and independent contractors who possess unique skills and talent."

xxx

To be considered a legitimate contractor, a contractor must have substantial capital or investment. It must also have a distinct and independent business uncontrolled by the principal and compliant with all the rights and benefits for the employees.

xxx

Permissible contracting or contracting is governed by a trilateral relationship wherein the principal engages the contractor's services. In turn, the contractor hires workers to accomplish the work for the principal.

xxx

The second type of independent contractor consists of individuals who possess unique skills and talents which set them apart from ordinary employees and whose means and methods of work are free from the control of employer. xxx In these instances, there is no trilateral relationship but a bilateral relationship because the independent contractors are directly engaged by the principal.

With this type of contracting, there is no employer-employee relationship between an independent contractor and the principal, and their contractors are governed by the Civil Code. When the status of the employment is in dispute, the employer bears the burden to prove that the workers are independent contractors rather than regular workers."



**Ditiangkin v.
Lazada**

*G.R. No. 246892
21 September 2022*

JURISPRUDENCE



"In this case, respondents contend that petitioners are independent contractors and that there is no employer-employee relationship between them. They submit that petitioners represented having substantial capital when they signed the Contract and should be bound by its stipulations.

However, respondents failed to discharge their burden of proving that petitioners are independent contractors. Petitioners do not fall under any of the categories of independent contractors.

First, petitioners are not hired by a contractor or subcontractor. xxx

Second, petitioners cannot be considered independent contractors in a bilateral relationship. The work performed by petitioners do not require a special skill or talent. Picking up and delivering goods from warehouse to buyers do not call for a specific expertise. It is also not shown that petitioners were hired due to their unique ability or competency. “

xxx



**Ditiangkin v.
Lazada**

*G.R. No. 246892
21 September 2022*



JURISPRUDENCE



“The services performed by the petitioners are integral to respondents’ business. Respondents insist that the deliver of items is only incidental to their business as they are mainly an online platform where sellers and buyers transact. However, the delivery of items is clearly integrated in the services offered by respondents. That respondents could have left the delivery of the goods to the sellers and buyers is of no moment because this is evidently not the business model they are implementing.



**Ditiangkin v.
Lazada**

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21 September 2022*

In carrying out their business, they are not merely a platform where parties can transact; they also offer the delivery of the times from the sellers to the buyers. The delivery eases the transaction between the sellers and buyers and is an integral part of the respondent Lazada’s business. Further, respondent Lazada admitted that it has different route managers to supervise the delivery of the products from the sellers to the buyers. Thus, it has taken steps to facilitate not only the transaction of the seller and buyer in the online platform but also the delivery of the items.”



ISSUES & CHALLENGES



Policy /law

Evolving nature of digital work and business models

Administrative machinery

- *Labor law compliance/dispute resolution for arrangements beyond the traditional EER*
- *Enforcement of labor standards/OSH standards in cross-border work arrangements*
- *Social protection for freelance/gig/platform workers*

Labor market dynamics

- *Employability*
- *Job displacement*

WAYS FORWARD

Phil. Labor and Employment Plan (forthcoming)

- *Skills training / training hubs*
- *Policy on flexible work arrangements*
- *Programs promoting social security membership/availment*
- *Social protection for workers engaged in virtual work*
- *Frontline e-services*

27th ASEAN Labor Ministers Meeting

Under the Philippines as the Chairperson, cooperation will focus on the theme "Reshaping World of Work in the ASEAN Community Toward Digitalized, Inclusive and Sustainable Recovery a will focus on the theme Reshaping World of Work in the ASEAN Community Toward Digitalized, Inclusive and Sustainable Recovery and Growth

2023 DOLE Plan

- *Upskilling for the ICT sector*
- *LMI (digital skills)*
- *Policy on digital labor market intermediaries*
- *E-learning / e-campus /Labor and Employment Education Services (LEES)*
- *Compliance with DPA / Cybersecurity laws (training/policies)*
- *Digital infrastructure (IT systems) / e-services*
- *Digital capacities (training)*
- *Partnership with PSA in LMI on emerging forms of work (platform work/gig economy)*
- *Case management*

Research

- *Decent work / labor dimensions of AI*
- *Digital labor market intermediaries*
- *Exploring administrative machineries for workers in the gig economy*

THANK YOU

THANK YOU

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