L.N. 268 of 2022

EMPLOYMENT AND INDUSTRIAL RELATIONS ACT (CAP. 452)

Digital Platform Delivery Wages Council Wage Regulation Order, 2022

IN EXERCISE of the powers conferred by article 48 of the Employment and Industrial Relations Act, the Minister responsible for employment and industrial relations, has made the following regulations:-

Citation, scope and commencement.

1. (1) The title of this order is the Digital Platform Delivery Wages Council Wage Regulation Order, 2022.

(2) The scope of this order is to ensure that persons engaged to provide paid services consisting of the delivery of any consumer product, gain access to labour and social protection rights by ensuring the correct determination of their employment status, by promoting transparency, fairness and accountability in algorithmic management in respect thereof and by enhancing transparency, traceability and awareness of developments in relation to said activity.

(3) This order shall come into force within three (3) months of its publication in the Gazette.

Interpretation.

2. (1) In this order, unless the context otherwise requires:

" Act" means the Employment and Industrial Relations Act; Cap. 452.

"algorithmic management" means the use by digital labour platforms of any automated systems, including automated monitoring systems and automated decision-making systems, in any manner whatsoever to match supply and demand for work, as well as to assign tasks, and monitor, evaluate and take decisions for the platform workers;

"digital labour platform" means any natural or legal person providing a commercial service enabling the delivery of any product and which meets all of the following requirements:

(a) it is provided, at least partially, at a distance through electronic means, such as a website or a mobile application;

(b) it is provided at the request of a recipient of the

service; and

(c) it involves, as a necessary and essential component, the organisation of work performed by persons, including but not limited to food couriers, through the use of vehicle transportation:

Provided that it excludes providers of a service whose primary purpose is to exploit or share assets but shall be limited to providers of a service for which the organisation of work performed by the person does not only constitute a minor and purely ancillary component;

"digital platform work" means any work organized through a digital labour platform and performed in Malta by a person on the basis of a contractual relationship between the digital labour platform and the person, or on the basis of a contractual relationship between the work agency and the person who is assigned to or placed at the disposal of any digital labour platform or multiple digital labour platforms by the work agency, in each case irrespective of whether a contractual relationship exists between the person and the recipient of the service;

"employer" shall have the same meaning as that assigned to it by the Act and includes, for the purpose of this order, digital labour platforms and work agencies, unless otherwise expressly provided or the context otherwise requires;

"General Data Protection Regulation" means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC as implemented by the Data Protection Act;

Cap. 586.

"micro, small or medium-sized enterprises" means micro, small and medium-sized enterprises as defined in the Annex to Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises;

"official representative" means any lawyer representing a person performing digital platform work, a trade union representative, or any information and consultation representative appointed in accordance with the Employee (Information and Consultation) Regulations;

S.L. 452.96.

"on a regular or on an irregular basis" means, in terms of

hours of work, whether often and, or in a consistent manner or not often and, or in an inconsistent manner;

"person performing digital platform work" means any person performing digital platform work, irrespective of the contractual designation of the relationship between that person and the digital labour platform or the work agency by the parties involved;

"platform worker" means:

(a) any person performing digital platform work and who has entered into a contract of employment or an employment relationship or any other form of arrangement irrespective of the contractual designation with any digital labour platform or multiple digital labour platforms and who is engaged, whether on a regular or on an irregular basis, to provide services consisting of the delivery of any product; and

(b) any person performing digital platform work and who has entered into a contract of employment or an employment relationship or any other form of arrangement irrespective of the contractual designation with a work agency and who is assigned to, or placed at the disposal of, whether on a regular or on an irregular basis, any digital labour platform or multiple digital labour platforms to provide services consisting in the delivery of any product;

"time-and-a-half" and "double-time" mean respectively one and a half times and twice the actual time rate applicable to the platform worker;

"work agency" means any natural or legal person who enters into contracts of employment, employment relationships or any other form of arrangement irrespective of the contractual designation, with platform workers and who assigns them to, or places them at the disposal of, whether on a regular or on an irregular basis, any digital labour platform or multiple digital labour platforms, to provide services consisting in the delivery of any product, whether the said activity is the main activity or an ancillary activity of the work agency or otherwise:

(2) Without prejudice to the provisions of sub-article (1), terms and expressions used in this order shall, unless the context otherwise requires, and which are not defined herein, have the meaning assigned to them in the Act.

Applicability.

3. (1) This order applies to:

(a) persons who have entered into a contract of employment or an employment relationship, whether on an indefinite, whole-time, part-time or a fixed term basis, or any other form of arrangement irrespective of the contractual designation, with a work agency, and who are assigned to or placed at the disposal of, whether on a regular or on an irregular basis, a digital labour platform or multiple digital labour platforms, whether concurrently or successively, to provide services consisting of the delivery of any product;

(b) persons who have entered into a contract of employment or an employment relationship, whether on an indefinite, whole-time, part-time or a fixed term basis, or any other form of arrangement irrespective of the contractual designation, with any digital labour platform or multiple digital labour platforms, who are engaged, whether on a regular or on an irregular basis, to provide services consisting of the delivery of any product;

(c) persons who have entered into a contractual relationship which is declared as on self-employed basis with a digital labour platform or a work agency that controls directly or indirectly the performance of work and who are, by virtue of article 4(1), presumed to be in an employment relationship;

(d) public and private undertakings engaged in economic activities, if they are operating for gain or otherwise, which are work agencies or which perform the same functions as work agencies, whether as a main or as an ancillary function or which are digital labour platforms.

Legal presumption of an employment relationship.

4. (1) When considering the employment status of a person performing digital platform work, it shall be presumed that there is an employment relationship and that the digital labour platform for whom the platform work is provided, or the work agency who assigns such person to or places him at the disposal of any digital labour platform, as the case may be, is the employer and that the provisions of the Act and of the regulations or orders issued thereunder apply to that relationship.

(2) Any declaration made by any person in relation to his own or to another person's employment status shall be considered to be null and void if its consequences are in any way in conflict with the provisions of this order.

(3) Where the digital labour platform or the work agency, as

the case may be, claims that the contractual relationship with the person performing digital platform work is not an employment relationship in accordance with sub-article (1), the burden of proof shall be on the digital labour platform or the work agency, as the case may be, when declaring that there is no such employment relationship by proving that it does not control directly or indirectly the performance of the digital platform work because it does not fulfil at least four (4) of the following criteria in relation to the person performing the platform work:

(a) the effective determination of, or stipulating the maximum limits for the level of remuneration;

(b) the requirement that the person performing digital platform work respects specific binding rules with regard to appearance and conduct towards the recipient of the service or performance of the work;

(c) the supervision of the performance of the work or the verification of the quality of the results of the work, including by electronic means;

(d) the effective restriction of the freedom, including through sanctions, to organise one's work, in particular the discretion to choose one's working hours or periods of absence, to accept or to refuse tasks or to use sub-contractors or substitutes;

(e) the effective restriction of the possibility to build a client base or to perform work for any third party:

Provided that, any proceedings relating to such claim shall not have a suspensive effect on the application of the legal presumption.

(4) Where the person performing digital platform work claims that the contractual relationship with the digital labour platform or the work agency, as the case may be, is not an employment relationship in accordance with sub-article (1), the digital labour platform or the work agency, as the case may be, shall be required to assist the proper resolution of the proceedings, primarily by providing all relevant information held by it. The determination of the existence or otherwise of such an employment relationship shall be established by the person performing digital platform work by the application of the criteria mentioned in sub-article (3):

Provided that, any such proceedings relating to such claim

shall not have a suspensive effect on the application of the legal presumption.

(5) Any claims made either by the digital labour platform, or the work agency, as the case may be, or by the person performing digital platform work in accordance with sub-articles (3) and (4) respectively shall be made to the Director General responsible for Employment and Industrial Relations who shall proceed to investigate such claims and, based on the verification of the facts, establish whether an employment relationship exists or otherwise, whereupon the legal presumption shall apply or otherwise. This shall be without prejudice to the authority of the Director General responsible for Employment and Industrial Relations to enforce the provisions of sub-article (1) independently of any claim lodged by the digital labour platform, or the work agency, as the case may be, or by the person performing digital platform work.

(6) Notwithstanding any provision in any law or in any collective agreement or individual contract, if a person performing platform work had been performing digital platform work on a self-employed basis with any person prior to the date of entry into force of this order, and whose relationship by virtue of article 4(1) is deemed to be an employment relationship, any penalty clause laid down in the previous contract for service in relation to events occurring before the coming into force of this order, shall on the entry into force of this order, be null and void unless and until it is authorized by the Director General responsible for Employment and Industrial Relations in accordance with the provisions of the Act:

Provided that this does not in any way waive any right to institute civil procedures for damages which may be available to either party to the contract for service.

Effective date of employment, probation, notice and duration.

5. (1) A person who was considered to be performing services as a self-employed person for another person, whether prior to, or at any time following the date of the entry into force of this order, and is subsequently found to be an employee in accordance with article 4 shall be considered to have been engaged as an employee of the relevant digital labour platform for whom he was providing digital platform work or the work agency, as the case may be.

(2) The date of engagement referred to in sub-article (1) shall be considered to be the date of the entry into force of this order:

Provided that for the purpose of this sub-article, the probationary period shall be considered to have commenced on the date of the initial continuous provision of services by the platform

worker with the relevant digital labour platform or work agency, as the case may be, and the seniority and any notice due in case of any eventual redundancy shall also be computed accordingly:

Provided further that for the purpose of this sub-article the term "continuous provision of services" shall include those contracts, whether on a self-employed or employment basis, when the work performed was essentially the same and where the period between a contract and another does not exceed a period of six (6) months and the periods in between shall be taken into account.

(3) The employment referred to in sub-articles (1) and (2) shall be deemed to be indefinite and whole-time on the same basis as the hours of work of a comparable whole-time employee or, in the absence of a comparable whole-time employee, on a forty-hour (40) normal working week, unless in relation to the duration and hours of work, it is not specified otherwise in writing in accordance with article 15.

(4) For the avoidance of any doubt, for the purposes of this order, any employment relationship arising after the entry into force of this order may be entered into for an indefinite or a definite period and, or either on a whole-time or part-time basis:

Provided that no whole-time employment shall be entered into where the platform worker is already in whole-time employment with another employer.

Conditions of employment and part-timers.

6. (1) In accordance with this order, the employer shall be obliged to grant platform workers, in respect of all hours of work:

(a) with respect to wages:

(i) the same wages paid to a comparable employee employed by the same employer, which in no event shall be less than the applicable national minimum wage; or

(ii) when there is no such comparable employee, the pay shall not be less than the applicable national minimum wage:

Provided that if there is disagreement as to the payable wage and the platform worker terminates his employment, the provisions laid down in article 15(2) shall apply;

(b) with respect to other conditions of employment, the same conditions of employment, including but not limited to statutory bonuses, income supplements and general increase in wages granted by the Government to all employees, as those

enjoyed by a comparable employee, which in no event shall be less than the minimum conditions of employment in accordance with the Act and the regulations or orders made thereunder or, where there is no such comparable employee, to the applicable minimum conditions of employment in accordance with the Act and the regulations or orders made thereunder, unless otherwise specifically referred to in this order;

(c) the conditions of employment and other entitlements referred to in this order.

(2) In the case that it is specified in writing in accordance with article 15 in relation to the hours of work that the platform worker shall be required to work less than the forty-hour (40) normal working week, the platform worker shall in such event be entitled to the conditions of employment, including the conditions provided for in this order, on a *pro rata* basis.

(3) During their hours of work, platform workers shall not be entitled to refuse to perform delivery of any product as reasonably assigned to them, unless there is an objective ground.

Vehicle, equipment and mobile telephony.

7. (1) The employer shall be responsible to provide, at his expense, appropriate vehicles that are properly equipped and maintained in good running order for use by the platform workers to provide the platform work. Said vehicles may include electric motorcycles, electric motorbikes and electric bicycles, but shall exclude electric or any other kick scooters.

(2) All costs associated with the use of the vehicles as provided in sub-article (1) including insurance, licence fees and fuel shall be the responsibility of the employer.

(3) The employer shall further be responsible to provide at his expense, to the platform workers all equipment, material and tools that the platform workers may require in relation to the provision of the platform work, as well as any uniforms and any other wearing apparel, including safety helmets, that the platform workers may be required to wear, in relation to the provision of the platform work. No platform worker shall be required to pay any fee, deposit or anything similar in relation to the provision of the said equipment, material, tools, uniforms or any other wearing apparel.

(4) The platform workers shall be responsible for the safekeeping of the vehicles and equipment provided to them by their employer in relation to the platform work as referred to in sub-articles (1) and (3).

(5) The employer shall also be responsible to provide, at his expense, to the platform workers a mobile phone and internet services for use by the platform workers for the purpose of their duties, unless it is otherwise agreed by the employer and the respective platform worker that the employer should cover, or grant an adequate allowance to cover, the costs incurred by and charged in the name of the platform worker for the use of mobile telephony services, whether through messages or calls, the cost of the mobile phone and internet services, used by the platform worker for the purpose of his duties.

Minimum overtime rates.

8. Overtime rates shall be payable to all whole-time platform workers as follows:

(a) for all time worked in excess of forty (40) hours in any one week.....time-and-a-half;

(b) for all time worked on any pre-determined day of rest.....double time.

Sick Leave.

Cap. 318.

9. (1) Whole-time platform workers shall in every calendar year be entitled to sick leave, of at least the equivalent of two (2) working weeks on full pay, less an amount equal to the sum set for sickness benefit entitlement at the rate established under the Social Security Act, and part-time platform workers shall have a *pro rata* entitlement to sick leave in hours on full pay, less an amount equal to the sum set for sickness benefit entitlement at the rate established under the Social Security Act, which amount is also to be calculated on a *pro rata* basis:

Provided that:

(a) the first three (3) days of any claim for sick leave shall be paid in full by the employer;

(b) a medical certificate covering the period of absence shall be provided to the employer on the day of return to work or, if said period of absence is longer than seven (7) days, within seven (7) days of the onset of sick leave absence.

(2) Whole-time platform workers employed for less than one year shall be entitled to paid sick leave in proportion to the number of months in employment.

(3) The employer shall have the right to request a medical certificate by a physician sent by him to certify incapacity for work during the period of absence.

(4) The sick leave entitlement granted in accordance with this article shall be calculated on the basis provided for annual leave as specified in regulation 8(1) of the Organisation of Working Time Regulations.

S.L. 452.87.

Other leave.

10. (1) Every platform worker shall on employment, be entitled to be granted by his employer:

(a) one (1) working day of bereavement leave;

(b) two (2) working days marriage leave;

(c) up to one (1) year of injury leave;

(d) jury service leave for as long as necessary;

(e) quarantine leave for any period of quarantine as may be determined by the Superintendent of Public Health or by any other public authority.

(2) An employer shall have the right to request documentation from a platform worker:

(a) indicating when the events referred to in paragraphs (b) and (d) in the previous sub-article are scheduled to occur;

(b) indicating that the event referred to in paragraph (c) in the previous sub-article has actually occurred; and

(c) on return to work, indicating that the events referred to in paragraphs (a), (b), (d) and (e) in the previous sub-article have actually taken place.

(3) The entitlement to bereavement leave and marriage leave shall be availed of on the next working day after the occurrence of the relevant event, unless otherwise requested by the platform worker, who may request a postponement of up to two weeks after the event in compelling circumstances linked to the same event. In such cases the employer shall grant the platform worker the postponement as requested.

Work on public holidays.

Cap. 252.

11. Notwithstanding any provisions of any other legislation, when a platform worker provides work on a national holiday or any other public holiday in accordance with the National Holidays and Other Public Holidays Act, the remuneration for such work shall be at the normal rate:

Provided that the platform worker shall in such event be entitled to an additional number of hours so worked of vacation leave

during that same calendar year in respect of each such national or other public holiday.

Equal treatment.

12. Notwithstanding any other provision of this order, the basic working and employment conditions of platform workers engaged by a work agency shall, for the duration of the time in which the platform workers are assigned to or placed at the disposal of any one or multiple digital labour platforms to provide services consisting of the delivery of any product, be at least those that would apply if they had been recruited directly by the digital labour platform or multiple digital labour platforms, as the case may be, to occupy the same job, by virtue of the Act, or any regulations issued thereunder or under any other legislation or by virtue of any applicable collective agreement:

Provided that the provisions of articles 6 to 11 shall not have effect in relation to periods in which platform workers are not assigned to, or placed at the disposal of any digital labour platform to provide services consisting of the delivery of any product where such periods are not less than two weeks. For the avoidance of any doubt, during said periods where the platform worker shall not be so assigned to, or placed at the disposal of any digital labour platform, the platform worker shall still be entitled to the working and employment conditions granted by the Act, regulations or orders issued thereunder to all employees, as those enjoyed by a comparable employee, which in no event shall be less than the minimum conditions of employment in accordance with the Act and the regulations or orders made thereunder or, where there is no such comparable employee, to the applicable minimum conditions of employment in accordance with the Act and the regulations or orders made thereunder:

Provided further that if a platform worker is subsequently replaced by the work agency, the platform worker assigned as a replacement shall have equal treatment from the first day of assignment.

Occupational health and safety. Cap. 424.

13. Without prejudice to the general obligations in terms of the Occupational Health and Safety Authority Act and any regulations issued thereunder, the employer shall be responsible to ensure that a safe working environment is provided for platform workers by ensuring that risks relating to the platform workers' duties are identified and measures are taken for such risks to be avoided as much as possible.

No payment shall be demanded, no deductions shall be made.

14. (1) No payments or charges shall be demanded or levied through a deduction from wages from any platform worker by his employer in consideration for recruitment by a work agency or any digital labour platform or in consideration for concluding a contract of

employment with a work agency or any digital labour platform.

(2) No deduction shall be made from the wages of a platform worker by a work agency or digital labour platform whether in consideration of the circumstances mentioned in sub-article (1) or in consideration of other circumstances, except and in so far as such deductions from wages are permissible under the Act and the regulations made thereunder.

Information to platform workers.

L.N. 267 of 2022.

15. (1) In situations where the employment status of a person is deemed to be one of employment in accordance with this order, the employer shall be bound to give or send to the platform worker a letter of engagement or a signed declaration, which shall include the information listed in the Transparent and Predictable Working Conditions Regulations, within seven (7) calendar days from the date of coming into force of this order:

Provided that, after the coming into force of this order the said information shall, in any case, be provided within seven (7) calendar days from the commencement of the employment relationship.

(2) If a platform worker does not agree with:

(a) any of the conditions of employment listed in a letter of engagement or a signed declaration in accordance with this article; or

(b) the amount of wages being proposed to be given as specified in paragraph (a) of article 6,

and leaves employment, he may institute proceedings before the Tribunal where he may claim unfair dismissal and the relevant provisions of the Act shall apply.

Right to receive reasons in writing for difference in treatment.

16. It shall be the duty of the employer to provide to the platform worker the reasons for any difference in treatment if he considers that his employer may have treated him in a manner which infringes a right conferred on him by this order, and if he requests such information. The said reasons are to be provided in writing within twenty-one (21) days from the date of the request and shall be admissible as evidence in any proceedings in accordance with this order.

Transparency in the automated monitoring and decision-making systems and their use. L.N. 267 of 2022.

17. (1) Without prejudice to the rights and obligations of the employers and platform workers under the Transparent and Predictable Working Conditions Regulations, those employers to whom this order is applicable shall inform platform workers of the following:

(a) automated monitoring systems which are used to monitor, supervise or evaluate the work performance of platform workers through electronic means; and

(b) automated decision-making systems which are used to take or support decisions that significantly affect the platform workers' working conditions, in particular their access to work assignments, their earnings, their occupational safety and health, their working time, their promotion and the status relating to their employment, including the restriction, suspension or termination of their digital account.

(2) The information referred to in sub-article (1) shall concern:

(a) as regards automated monitoring systems:

(i) the fact that such systems are in use or are in the process of being introduced;

(ii) the categories of actions monitored, supervised or evaluated by such systems, including evaluation by the recipient of the service;

(b) as regards automated decision-making systems:

(i) the fact that such systems are in use or are in the process of being introduced;

(ii) the categories of decisions that are taken or supported by such systems;

(iii) the main parameters that such systems take into account and the relative importance of those main parameters in the automated decision-making, including the way in which the platform worker's personal data or behaviour influence the decisions; and

(iv) the grounds for decisions to restrict, suspend or terminate the platform worker's account or any decision with similar effects.

(3) Employers shall provide the information referred to in sub-article (2) in the form of a document which may be in electronic

format, at the latest on the first working day, as well as in the event of substantial changes and at any time upon the platform workers' request. The information shall be presented in a concise, transparent, intelligible and easily accessible form, using clear and plain language.

(4) Employers shall make the information referred to in sub-article (2) available to platform workers' official representatives and the Director General responsible for Employment and Industrial Relations upon their respective request.

(5) Employers shall not process any personal data concerning platform workers that are not intrinsically connected to and strictly necessary for the performance of their work. In particular, they shall not:

(a) process any personal data on the emotional or psychological state of the platform worker;

(b) process any personal data relating to the health of the platform worker, except in cases referred to in Article 9(2), in points (b) to (j) of the General Data Protection Regulation;

(c) process any personal data in relation to private conversations, including exchanges with platform workers' official representatives;

(d) collect any personal data while the platform worker is not offering or performing platform work.

Human monitoring of automated systems.

18. (1) Employers shall regularly monitor and evaluate the impact of individual decisions taken or supported by automated monitoring and decision-making systems, as referred to in article 17(1), on working conditions.

Cap. 424.

(2) Employers shall, in accordance with the provisions of the Occupational Health and Safety Authority Act and any regulations issued thereunder:

(a) evaluate the risks of automated monitoring and decision-making systems for the safety and health of platform workers, in particular as regards possible risks of work-related accidents, psychosocial and ergonomic risks;

(b) assess whether the safeguards of those systems are appropriate for the risks identified in view of the specific characteristics of the work environment; and

(c) introduce appropriate preventive and protective

measures.

(3) Employers shall not use automated monitoring and decision-making systems in any manner that puts undue pressure on platform workers or otherwise puts at risk the physical and mental health of platform workers.

(4) Employers shall ensure sufficient human resources for monitoring the impact of individual decisions taken or supported by automated monitoring and decision-making systems in accordance with this sub-article.

(5) The persons charged by the employer with the function of monitoring shall have the necessary competence, training and authority to exercise that function. The said persons shall not be dismissed, be subject to any disciplinary measures or otherwise made to suffer any other adverse treatment for overriding automated decisions or suggestions for decisions.

Human review of significant decisions.

19. (1) Platform workers shall have the right to obtain an explanation from the employer for any decision taken or supported by an automated decision-making system that significantly affects the platform worker's working conditions, as referred to in article 17 (1)(b).

(2) Without prejudice to the provisions of sub-article (1), the employer shall provide platform workers with access to a contact person designated by the employer to discuss and to clarify the facts, circumstances and reasons having led to the decision. The employer shall ensure that such contact persons have the necessary competence, training and authority to exercise that function.

(3) Where platform workers are not satisfied with the explanation or the written declaration of the reasons given or they consider that the decision infringes their rights, they shall have the right to request the employer to review that decision. The employer shall respond to such request by providing the platform worker with a substantiated reply without undue delay and in any event within one (1) week of receipt of the request:

Provided that in the case of employers that are micro, small or medium-sized enterprises, the deadline for the provision of the reply referred to in this sub-article shall be extended to two (2) weeks.

(4) Where the decision referred to in this article infringes the platform worker's rights, the employer shall rectify that decision without delay or, where such rectification is not possible, offer adequate compensation.

(5) This article shall be without prejudice to the rights of the platform worker to institute proceedings before the Tribunal where he may claim unfair dismissal and the relevant provisions of the Act shall apply.

Information and consultation. S.L. 452.96.

20. (1) Without prejudice to the rights and obligations in the the Employee (Information and Consultation) Regulations, the employer shall ensure information and consultation of the platform workers' official representatives, or where there are no such representatives, the platform workers, on decisions likely to lead to the introduction of or substantial changes in the use of automated monitoring and decision-making systems referred to in article 17(1).

(2) For the purposes of this article, the definitions "information" and "consultation" as provided in regulation 2 of the Employee (Information and Consultation) Regulations shall apply. The provisions of regulations 3, 4, 7 and 8 of the Employee (Information and Consultation) Regulations shall apply accordingly.

S.L. 452.96.

(3) The platform workers may be assisted by the official representative, insofar as this is necessary for them to examine the matter that is the subject of information and consultation and formulate an opinion. Where an employer has more than fifty (50) platform workers in Malta, the expenses that may be incurred for the examination of the matter that is the subject of information and consultation shall be borne by the employer, provided that they are proportionate.

Availability of relevant information on platform work.

21. (1) Without prejudice to any other relevant provisions in any regulations, orders or other subsidiary legislation made under or kept in force under the Act, the digital labour platforms and work agencies shall make the following information available to the Director General responsible for Employment and Industrial Relations, official representatives exercising their representative functions and other relevant authorities:

(a) the number of platform workers performing work through the digital labour platform concerned on a regular basis in Malta and their contractual or employment status;

(b) the general terms and conditions applicable to the platform workers, including those terms and conditions that are unilaterally determined by the digital labour platform or work agency, as the case may be; and

(c) any other specific terms and conditions that may be applicable to platform workers in any circumstances.

(2) The information shall be updated at least every six (6) months and, as regards paragraphs (1)(b) and (c), each time the terms and conditions are modified.

(3) The Director General responsible for Employment and Industrial Relations and other relevant authorities and official representatives shall have the right to request digital labour platforms and work agencies to provide additional clarifications and details regarding any of the data provided. The digital labour platforms and work agencies shall respond to said request within a reasonable period of time established by the Director General responsible for Employment and Industrial Relations, other relevant authorities or official representatives, as the case may be, by providing a substantiated reply.

Access to relevant information on algorithmic management to work agencies.

22. Digital labour platforms to whom platform workers are assigned, or placed at the disposal of, by any work agency shall grant access to such work agency to all the relevant information including that on algorithmic management relating to such platform workers in real time so as to enable work agencies to comply with the obligations arising from this order.

Proceedings on behalf or in support of platform workers.

23. (1) Without prejudice to Article 80 of the General Data Protection Regulation, official representatives or other legal entities which have a legitimate interest in defending the rights of platform workers, may engage in any judicial or administrative proceedings to enforce any one of the rights or obligations arising from this order. These official representatives or other legal entities may act on behalf or in support of platform workers in the case of an infringement of any right or obligation arising from this order, with that person's approval.

(2) Official representatives shall also have the right to act on behalf or in support of several platform workers, with those persons' approval.

Communication channels for platform workers.

24. The employers shall be responsible for the creation of the possibility for platform workers to contact and communicate with each other, and to be contacted by official representatives of platform workers, through the relevant digital infrastructure or similarly effective means, while complying with the obligations under the General Data Protection Regulation. Employers shall refrain from accessing or monitoring those contacts and communications.

Protection against adverse treatment or consequences.

25. Without prejudice to article 28 of the Act, it shall be unlawful to victimise, to subject any platform worker, including their official representatives from any adverse treatment by the digital labour platform or the work agency, as the case may be, or from any adverse consequences resulting from a complaint lodged against the

digital labour platform or work agency, as the case may be, or resulting from any proceedings initiated with the aim of enforcing compliance with the rights provided for in this order.

Protection from dismissal and burden of proof.

26. (1) A platform worker who is dismissed or is subject to measures with equivalent effect shall be regarded for the purposes of this order as having been unfairly dismissed or subject to measures with equivalent effect, if the reason therefor is that the platform worker has exercised the rights provided for in this order.

(2) Platform workers who consider that they have been dismissed, or have been subject to measures with equivalent effect, on the grounds that they have exercised the rights provided for in this order, may request the digital labour platform or work agency, as the case may be, to provide duly substantiated grounds for the dismissal or the equivalent measures. The digital labour platform or work agency, as the case may be, shall provide those grounds in writing within a period of ten (10) working days.

(3) When a platform worker establishes before the Tribunal facts from which it may be presumed that there has been such a dismissal or equivalent measures, it shall be for the digital labour platform or work agency, as the case may be, to prove that the dismissal or equivalent measures were based on grounds other than those referred to in sub-article (1).

(4) In cases referred to in sub-articles (1) and (2), a platform worker may file a complaint in front of the Tribunal set up in terms of Part III of Title II of the Act.

More favourable provisions.

27. (1) This order shall be applicable without prejudice to the introduction and implementation of more favourable provisions to the platform worker in any individual contract or in any collective agreement.

(2) In addition, this order shall be without prejudice to any other rights conferred on platform workers by other legislation of the European Union.

Order supersedes less favourable provisions.

28. This order supersedes any less favourable relevant provisions in any regulations, orders or other subsidiary legislation made under or kept in force under the Act, including those governing the temporary agency work and employment status, and in case of any inconsistency between said legislation and this order, this order shall prevail.

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29. Any person contravening the provisions of this order shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) of not more than two thousand euro (€2,000). Offences and punishments.

Ippubblikat mid-Dipartiment tal-Informazzjoni (doi.gov.mt) — Valletta — ***Published by the Department of Information (doi.gov.mt) — Valletta***
Mitbugħ fl-Istamperija tal-Gvern fuq karta FSC — ***Printed at the Government Printing Press on FSC certified paper***

Prezz/*Price*
€1.80