WORKING TIME AND ILO STANDARD-SETTING ON *DECENT WORK IN THE PLATFORM ECONOMY*

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The United Nations International Labour Organization (ILO) has embarked upon a standard-setting process on *Decent Work in the Platform Economy* in which it is considering adopting international law(s) (standards) on platform work. In January 2024, the ILO published a 'Law and Practice report': Report V(1) *Realizing Decent Work in the Platform Economy*.[1] The Report outlines the growth of the platform economy, explores the nature of platform work, highlights both relevant features of existing international standards and member State laws that are devoted to platform work, and includes a questionnaire on the content of potential international standards. The ILO's constituents - governments and employers' and workers' organizations in the Organization's 187 member States - are requested to respond to the questionnaire by 31 August 2024.

Any ILO standards will be central to the future debates on platform work. The Report is therefore valuable for its sophisticated approach to the role and design of international norms, including in an arena of rapid technological advance. Report V(1) both identifies new regulatory targets and strategies and stresses the enduring resonance of the ILO's existing norms. It also grasps that platform work has dimensions that are both novel and familiar.

This standard-setting exercise, however, is also of considerable significance to the evolution of key elements of broader labour law regimes, including laws on working time. Platform work has been at the forefront of disputes over working time, and the emerging regulatory regimes are likely to influence broader understandings of what constitutes working time and how it

[1] ILO, *Realizing Decent Work in the Platform Economy*, International Labour Conference 113th Session, 2025, ILC.113/Report V(1) (2024), available at file:///C:/Users/llqp36/Downloads/wcms_909906.pdf. On the standard-setting process see https://www.ilo.org/resource/news/new-report-platform-economy-marks-first-step-towards-considering-new.

should be counted, waged, and regulated. It is therefore worth considering in more detail the Platform Economy standard-setting exercise as it relates to working time.

As part of a broader project of investigating notions of working time in contemporary labour law, this note reflects upon Report V(1)'s conception of working hours. The focus is on the Report's treatment of "waiting time", the comparison it draws between "waiting time" and "on call time", the working time dimension of remuneration in platform work, and the relevance of regulatory mechanisms to ensure guaranteed or predictable hours.

The unitary model and "waiting time" in Report V(1)

The report on *Realizing Decent Work in the Platform Economy* recognises that working hours and wages are crucial challenges in platform work[2]. Of particular significance in how Report V(1) approaches working time is that it singles out "waiting time".[3] The Report characterises "the issue of waiting periods and their remuneration" as a normative gap.[4]

This separate identification of "waiting time" is an illustration of an evolving tendency to divide working hours into a range of classifications. Yet this approach to conceptualising and regulating working time is not inevitable. My work, for example, has advocated for a unitary model of working time.[5] I argue that the fragmentation of working hours into discrete time periods can undermine worker protection and is best avoided. Fragmentation oftens tends towards the exclusion from protective regimes of certain working hours, usually involving "availability" to the employer, which should be counted and waged like all others. During "availability" periods – just like working hours that involve more physically active labour - the workers are at the disposal of the employer and are unable to devote their time to their

[2] Ibid, paragraph 290.
[3] Ibid, most notably in paragraphs 78-79.
[4] Ibid, paragraph 79.
[5] Deirdre McCann and Jill Murray *The Legal Regulation of Working Time in Domestic Work* (ILO 2010), available at https://www.ilo.org/publications/legal-regulation-working-time-domestic-work; Deirdre McCann and Jill Murray "Prompting Formalisation Through Labour Market Regulation: A 'Framed Flexibility' Model for Domestic Work" (2014) 43(3) *Industrial Law Journal* 319-348, available at https://academic.oup.com/ilj/article-abstract/43/3/319/693366; Deirdre McCann "Temporal Casualisation and 'Availability Time: *Mencap*, *Uber* and the Framed Flexibility Model'" (*Decent Work Regulation* Research Paper 01/2020, April 2020), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3789540; Deirdre McCann "Framed Flexibility: A New Model for Working Time Laws" (2020) Policy Briefing, Decent Work Regulation Project, https://www.dur.ac.uk/media/durham-university/departments-/law-school/policy-engagement/decent-work-regulation-images/FramedFlexibilityBriefing.pdf

families or to other elements of their lives. A unitary model therefore fully counts "waiting" or "availability" periods towards both working time and wage entitlements.[6]

Legal-policy decisions on platform work, further, may not remain confined to platform work, but could be more widely influential. This overspill may, in some respects, be beneficial. The line between platform work and the increasingly datafied organisation of non-platform jobs can be thin, and innovative regulatory models on, for example, data protection, surveillance or the use of algorithms would be welcome across a range of jobs.[7] Yet platform work laws could also spread deficient concepts and regulatory models to other jobs and sectors, including by putting pressure on existing labour law regimes. In relation to working time, platform work frameworks could, most obviously, influence the conditions and regulation of jobs that can involve significant waiting periods, such as social care, security, delivery and driving jobs, even when these are not organised through a platform.

The depiction of waiting hours as a normative gap is not the only conclusion that could be drawn. The relevant ILO Conventions - the Hours of Work Conventions Nos. 1[8] and 30[9] - define hours of work as "the time during which the persons employed are at the disposal of the employer" (Article 2 of Convention No. 30).[10] The ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) - the expert body that determines the legal scope, content and meaning of ILO Conventions[11] - has emphasised that "[t]he definition of hours of work in both Conventions is based on the criteria of 'being at the disposal of the employer'".[12]

[6] See e.g. McCann "Temporal Casualisation and 'Availability Time'", ibid, pp 7-9.
[7] On the regulatory dimensions of the datafication of working life see further Deirdre McCann and Arely Cruz-Santiago "Labour/Data Justice: A New Framework for Labour/Regulatory Datafication" (2022) 49(4) *Journal of Law and Society* 658-680, available at https://onlinelibrary.wiley.com/doi/full/10.1111/jols.12392.
[8] Hours of Work (Industry) Convention, 1919 (No. 1).
[9] Hours of Work (Commerce and Offices) Convention, 1930 (No. 30).
[10] Convention No. 1 covers industrial workers. As Report V(1) notes (note 1 above, para 78), the objective of Convention No. 30 is to extend hours of work standards to all those not covered by Convention No. 1, with the exception of those employed in agriculture, maritime or inland navigation, fisheries and domestic service, ILO *Hours of Work: From Fixed to Flexible? General Survey of the Reports Concerning the Hours of Work (Industry) Convention, 1919 (No. 1), and the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30)*, International Labour Conference, 93rd Session, Report III (Part 1B), 2005, paragraph 10, citing *League of Nations: International Labour Conference*, *Fourteenth Session*, Vol. 1 (Geneva, ILO, 1930), p. 406
[11] See further Report V(1) (note 1 above), note 108.
[12] ILO *Hours of Work* General Survey (note 10 above) at paragraph 46.

This definition can be taken to be the norm (rather than there being a normative gap). Labour laws frequently provide open-textured definitions of hours of work/working time, rather than providing a list of time-periods that are covered by an instrument. Working time laws do not tend to address waiting periods separately. Waiting is a common feature of many jobs, routinely taken to be included among protected hours, and not, therefore, singled out for separate treatment in regulatory frameworks. The language of being "at the disposal of" the employer is a widely-used formula for identifying computed/waged time, and the absence of a direct reference to "waiting time" is not best considered a normative gap.

With respect to potential ILO Platform Economy standard(s), a unitary model of working time would recognise both the degree of obligation on platform workers across the expanse of their shifts of work and the full extent of their absence from their families and personal lives.

This approach would also align with the ILO's Hours of Work standards. Question 12 in Report V(I)'s questionnaire to ILO members, for example, asks whether, in any platform work instrument(s), "hours of work" should mean "the time during which digital platform workers are at the disposal of a digital labour platform, including when they are waiting for work assignments."[13] A yes response to this question would uphold a unitary model. It would also be in line with the Convention 30 definition of hours of work. Such an awareness of the intersection of the international norms would reflect the principle of "unity of labour law regimes" proposed by McCann and Murray to address the interrelationship of specific and universal regulatory frameworks in the regulation of working time.[14] This principle calls for systems of labour regulation to be conceptualised as an integrated whole, to ensure coherent labour law regimes and to avoid undermining the protection extended by universal legal norms, including those on working time.[15] Relatedly, Question 56, on the minimum content of contracts asks whether contracts should specify "periods … during which the digital platform worker is expected to be at the disposal of the digital labour platform for work

[13] Report V(1) (note 1 above), p 112.
[14] McCann and Murray (2014) (note 5 above), pp 329-330.
[15] Report VI proposes a similar model, in the context of member State labour law regimes, to ensure that "platform workers who are employees would … enjoy protection no less favourable than those enjoyed by workers in an employment relationship generally", note 1 above, paragraph 303. This objective is reflected in Question 16 in the Report's questionnaire, as to whether platform workers in an employment relationship should be assured protection no less favourable than other employees (p 113); and Question 36, on whether any instrument(s) should provide that remuneration for platform workers is at least equivalent to the minimum wage of workers "in a comparable situation" (p 119). On the international norms, the Report stresses that international labour standards apply to all workers, including digital platform workers, unless otherwise provided, paragraph 300; see also Question 4, p 110.

assignments".[16] Since this is a reference to hours at the disposal of the platform, any international standard could require that contracts specify the worker's "hours of work."

"Waiting time" and "on-call time"

Report V(1) also refers to "waiting time" as related to "on call" (or "standby") time.[17] This characterisation, though, could be subject to further refinement, in particular so that it is not taken to suggest that "on-call" and "waiting" periods are identical.

The Report references the CEACR's analysis of "on call time" in the 2005 General Survey on *Hours of Work*[18]. The notion of on-call time that the Committee of Experts was considering is set out in paragraph 48 of the General Survey. The CEACR was not referring to waiting periods that are among the standard activities of a job. It defined on-call/standby time as "situations in which the worker is required by the employer to either stay at home, or be in a stipulated place or be able to be contacted by telephone, in the event that the worker is required to attend work".[19] This is the standard definition of on-call/standby duty: periods in which an employee is not engaged in any work at all but can be called on by an employer to begin to work. On-call periods, then, do not include periods when a worker is waiting, which are a routine element of many jobs, take place within the span of a shift, require the worker to be at the disposal of the employer, are beyond the control of the worker, often involve active labour (listening for a client's request for/sign of needing help, for example, or being alert to potential contact by a customer, client or colleague), and are counted as working time.

Even in relation to on-call periods, however, being at the disposal of the hirer remains the mark of working time. In consequence, on-call periods are counted as working time where the worker is subject to a degree of constraint on her personal activities that is at the level of being at the hirer's disposal. The CEACR emphasised in the 2005 *General Survey* that time spent on-call is regarded as hours of work under the Conventions "depending on the extent to which the worker is restricted from engaging in personal activities during that time."[20] The centrality of being at the hirer's disposal has been further stressed in recent years. Although two sector-specific standards adopted in the 1970s permit member State divergence on the

[16] Report V(1) (note 1 above), p 123-4.
[17] Ibid, paragraph 79.
[18] Ibid, citing ILO *Hours of Work* General Survey (note 10 above), paragraph 51.
[19] ILO *Hours of Work* General Survey, ibid, paragraph 48.
[20] ILO *Hours of Work* General Survey (note 10 above), paragraph 51, cited in Report V(1) (note 1 above) at paragraph 79.

classification of on-call periods that are at the disposal of the employer,[21] the Domestic Workers Convention, 2011 (No. 189) requires that on-call hours at the disposal of the household are counted as hours of work.[22]

Equal remuneration

The unitary model of working time that I advance requires not only that all working hours are counted towards working time rules (limits, rest periods etc.) but also that they are fully-waged. Under this model, time at the disposal of the employer counts as working time for all purposes, including remuneration.[23] Similarly, under the international Hours of Work standards, workers at the disposal of the employer are in working time and therefore entitled to be fully paid**.** As the CEACR stresses in the 2005 *General Survey* (in the context of genuinely on-call time) "when such time is counted as 'hours of work', the employee must be entitled to remuneration for such time as 'hours of work' (including overtime)".[24] The CEACR also emphasises this point in its comments to Member States on the Hours of Work standards.[25] The provision on on-call time at the disposal of the household in the Domestic Workers Convention (see above) has been clarified by the CEACR to require that these hours be regarded and paid as hours of work.[26]

[21] The Convention on Hours of Work and Rest Periods (Road Transport) Convention, 1979 (No. 153) permits member States not to recognise "periods of mere attendance or stand-by" as hours of work, even where drivers are not free to dispose of their time as they please, Article 4(2). The Nursing Personnel Recommendation, 1977 (No. 157), counts all hours at the disposal of the employer as working time while permitting "special provisions" for on-call duty, Para 31, recommending as little recourse as possible to on-call duty (Paragraph 37(a)), that decisions on the conditions in which on-call duty will be counted as working time are taken in agreement or in consultation with workers' representatives (Paragraph 43(b)) and, in an Annex of suggestions for member States on the practical application of the Recommendation (see Paragraph 71), suggesting that all on-call duty spent in the workplace be counted as working time (Annex, Paragraph 21).

[22] Domestic Workers Convention, 2011 (No. 189), Article 10(3); see e.g. CEACR Direct Request – Convention No. 189 – Madagascar, adopted in 2023; CEACR Direct Request – Convention No. 189 – Panama, adopted in 2018; CEACR Observation - Convention No. 189 - Panama, adopted in 2022.

[23] See e.g. McCan and Murray (2014) (note 5 above), p 343; McCann "Temporal Casualisation and 'Availability Time" (n 5 above), p 8.

[24] ILO *Hours of Work* General Survey (note 1 above), paragraph 51. When such time is not regarded as "hours of work", the employee "should still be entitled to some payment in recognition of the time spent 'on call' with a clear understanding of the terms and conditions of being 'on call,'" Paragraph 51.

[25] See e.g. CEACR Direct Request – Convention No. 1 – Angola, adopted in 2005.

[26] Domestic Workers Convention, 2011 (No. 189), Article 10(3); see, for example, CEACR Direct Request – Convention No. 189 – Panama, adopted in 2018; CEACR Observation - Convention No. 189 - Panama, adopted in 2022. See also Nursing Personnel Recommendation, 1977 (No. 157), Annex, Paragraph 21, discussed in note 21 above.

Since platform workers are at the disposal of the platform while waiting, they are, under the unitary model, in working time and entitled to be fully-waged. This dimension of the model is underpinned by the principle of the unity of labour law regimes discussed above. It also supports another element of McCann and Murray's framework for working time regulation, namely the principle of universality: that all workers are entitled to labour law's protections.[27] As Report V(1) states, any instruments should … ensure that "platform workers who are employees would … enjoy protection no less favourable than those enjoyed by workers in an employment relationship generally".[28]

The unitary approach to remuneration could therefore usefully be considered for any international standards on platform work. It is relevant to Question 38 in the Report V(1) questionnaire, which asks whether any platform economy instrument should provide that ILO member States devise "a method to determine the remuneration payable to digital platform workers for periods during which they are at the disposal of the platform and waiting for work assignments."[29] This question potentially envisages rules on hours of work that vary between different time periods and between member States. As just discussed, variable levels of remuneration for time at the disposal of the platform are not an effective fit with a unitary model, including under the international hours of work regime, or with a labour market characterised by its cross-border span.

Guaranteed or predictable hours?

As the standard-setting process unfolds, it will be interesting if clauses are proposed on guaranteed or predictable hours. These mechanisms are an evolving trend in working time law that may be of particular value in standards on platform work.[30]

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[27] McCann and Murray (2014) (note 5 above), p 328.
[28] Report V(1) (note 1 above), paragraph 303. This objective is reflected in Question 16 of the questionnaire, on whether platform workers in an employment relationship should be assured protection no less favourable than other employees (p 113), and Question 36, on whether the instrument(s) should provide that remuneration for platform workers is at least equivalent to the minimum wage of workers in a comparable situation (p 119).
[29] Ibid, p 119.
[30] e.g. the EU Directive on Transparent and Predictable Working Conditions, Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union [2019] OJ L186/105.