



New Challenges for Labour Law – The Challenges of the Gig Economy for the Occupational Health and Safety

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The Challenges of the Gig Economy for the Occupational Health and Safety

The Change of Occupational Health and Safety Over Time

19th Century



20th Century



21st Century





The Challenges of the Gig Economy for the Occupational Health and Safety

The Change of Occupational Health and Safety Over Time

19th Century

- Physical Risks

20th Century

- Physical Risks
- Psychosocial risks

21th Century

- Physical Risks
- Psychosocial risks
- Musculoskeletal Disorders

1

Challenging **the risks** of OHS

2

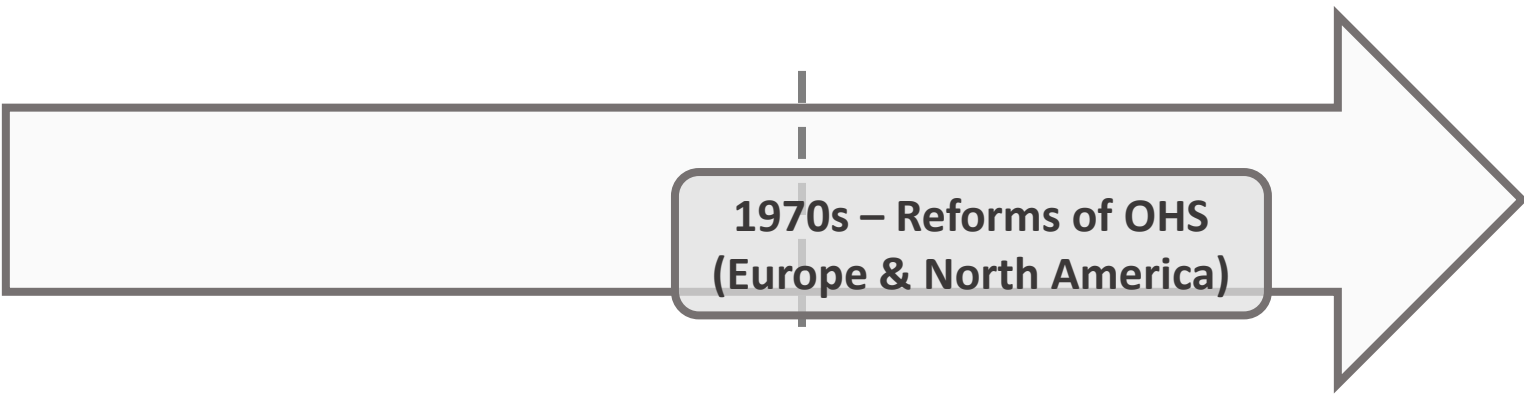
Challenging **approach** of OHS

Priority to the **individual compensation** in case of a work accident

Priority to the **collective prevention of the risk** – both working accident and occupational disease

3

Challenging OHS **Legal application**



1970s – Reforms of OHS (Europe & North America)



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Challenging the OHS Risks

Not necessarily new physical risks while performing the work (the task already existed), but the process through an algorithm **add/increase the psychosocial risks**

INRS Report – *Plateformisation 2027*, published January 2018

- **Intensification of the working time** – unexpected & atypical working hours; unrealistic or unclear objectives. Rhythm imposed by AI, remuneration “at the task”
- **Emotionally** – Obligation to be “positive” due to the notation by customers, and have to deal with the customers’ moods
- **Lack of autonomy** – Work prescribed and monitored by the AI
- **Lack of social interactions** – isolated worker, no close management in case of problem, no collective workforce
- **Conflict of value** – Work fragmented, lack of visibility on the purpose of the work
- **Insecurity of the work** – High dependency towards the platform with no stability or protection



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2

Challenging the OHS Approach

INRS Report – *Platformisation 2027*, published January 2018

Focused on the **general principles of prevention** that are the cornerstones of the OHS Approach and Legal Framework, and it 'linked' these principles to the **organisation of the platforms**.

GENERAL PRINCIPLES

- Avoiding the risk
- Assessing the risk
- Acting at the origin of the risk
- Planning the prevention
- Taking collective protective measures
- Giving precise instructions to the workers

OBSERVATIONS

- Avoiding all the risks will be complicated
- Problem: Platforms tendency to place the responsibility of the prevention and the assessment of the risk towards the (self-employed) worker
- Fragmentation of the work does not make a global vision easy
- Platforms do not integrate the prevention in their functioning – sometime value the individual compensation of the risk
- Work often performed by (self employed) worker individually
- The platforms are constantly in touch with the (self-employed) worker



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Remarks

- Algorithms could integrate it and start some mechanisms of prevention
- If analyse before hand of risks, platform can avoid the exposition
- Can use this connection to give some preventive information



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The general problem: **Lack incentive for prevention**

- No responsibility if there is an accident or development of a disease
- Important turn-over; importance giving on the short-term benefit
- Highly competitive; focusing on the profit

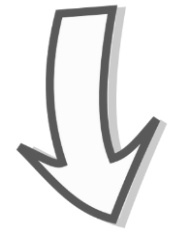


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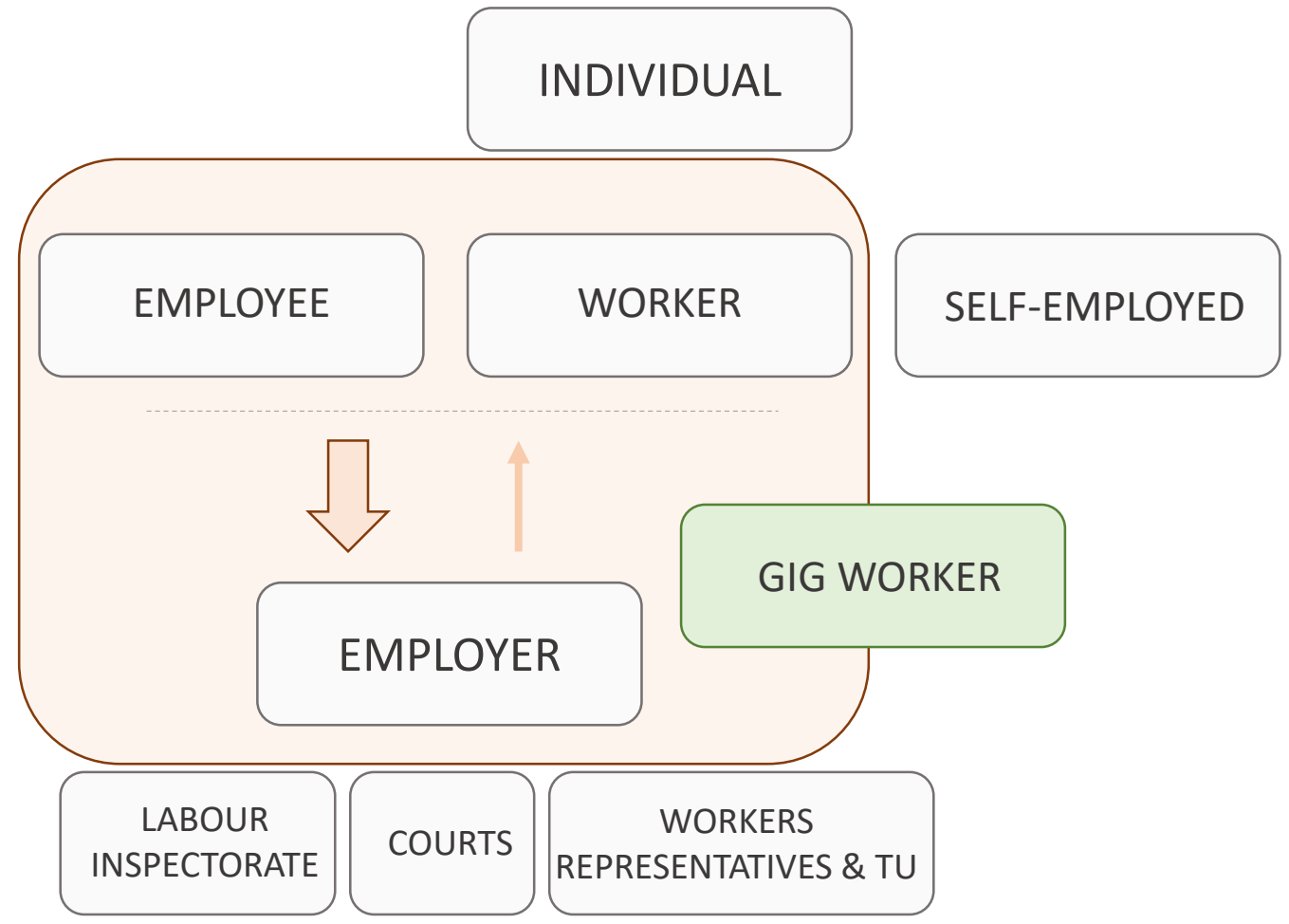
3

Challenging the OHS Legal Framework

Protected by
the OHS Legal
Framework



Enforcement
of the OHS
Legal
Framework





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Challenging the OHS Legal Framework

- What is the legal status of the « gig worker »? (ie Worker or Self-employed)
- Who is responsible for all the OHS Legal duties and consequences?

- The platforms do everything to « escape » the field of labour law (and so OHS) – they argue that they are connecting customers with self-employed individuals providing a service.
- The big problem of the definition of the gig-workers and the reality of their work.



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Challenging the OHS Legal Framework

“Gig workers are drivers, delivery-people, personal assistants, handymen, cleaners, cooks, dog-sitters, and babysitters but increasingly are also more specialized professionals, including nurses, doctors, teachers, programmers, journalists, marketing specialists and, well yes, lawyers too. For example, the rising startup InCloudCounsel, offers an army of lawyers providing on-demand, routine legal services.

The technology is here: as long as you have the time, skill, knowledge, and empty couch, and unoccupied vehicle, or an idle lawnmower, you can swiftly become a corporation. The platform economy channels anything and everything sitting idle into the market and monetizes it.” - (Lobel, 2017)



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Challenging the OHS Legal Framework

Old problem of the misclassification of the workers, with the difficulty that some of them might actually be « real » self-employed people.

Enforcement:

- Even if recognised as “worker” – might be possible for the “offline” workers (delivering, transportation, caring). They are physically performing somewhere. However, it might be problematic for the workers performing online, especially if they are not in the same country.
- Problem applicable both for the Labour Inspectorate & the competences of the Court

General problem of the non adaptation of the Labour Inspectorate to the new form of work, and the problem of a globalized labour market.



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CONCLUSION –

3 mains challenges:

- Risks – there is no new risks, but a new association of risks due to the functioning of the platform.
- Approach – challenging the general principle of prevention, focusing on the individual. However, there are ways that the platforms can use to improve and to prevent collectively the health and the safety of their workers/users. The question is the motivation and the willingness to do so.
- Legal Framework – there is the global challenge of the classification of the workers and its consequences in terms of protection. However, we need to think a step ahead and think about the conditions to enforce the legal framework if we find a way to make it applicable.



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Thank you
Danke
Merci

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