



### Labornet No. 1463

**Economically dependent self-employed workers (TRADE, for its acronym in Spanish). As of now, Argentina does not have a regulation governing this employee classification.**

Dear All,

This is an invitation to reflect on the gig economy, in particular to those of us who are dedicated to the academic world and study industrial relations and employee misclassification, analyzing the new way of doing business and self-employment opportunities, broader decision-making powers and autonomy, something that has not been regulated yet in Argentina and does not fit into the traditional dichotomy between employee and independent contractor.

Based on the principle of civil law about the parties' free will, and after several months of research, in spite of the blurry conditions of their work, where they use new technologies and digital platforms, riders can somehow be classified as self-employed workers.

The case under analysis here shows that based on several de facto situations, Riders may be classified as self-employed workers [monotributistas]. Their status is not determined by the type of work they do but rather by the way the work is done.

#### i. Riders and their commercial relationship

They are called "economically dependent self-employed workers" (TRADEs), an employee classification that has not been regulated in Argentina yet. This is how they are known in the world of new businesses and the digital platforms that make it possible.

The relationship between the digital platform for which they provide services and Riders is a business relationship, and not an employment relationship. They are self-employed workers.

It can be concluded that the services provided by Riders - a motorbike rider in this case - cannot be classified as employment because the requirements of subordination and dependence are not met here.

The rider was not subject to specific working hours or schedules. He decided when he wanted to work and which requests he accepted or even rejected after accepting them.

He had complete control over his work. He could freely decide which route to take for each request. This is a key issue to determine whether he was an employee or self-employed worker.

Can the app discipline Riders? Even if it could, the nature of the service provision shows Riders can organize their own work, which is a typical feature of self-employment.

Riders run their business for themselves and take responsibility for its success or failure, which indicates that they are not subject to the internal organizational structure of the company. They own their main equipment (motorbike and cell phone). Surprisingly enough, no reference is made to the economic value of the software or the app used.

Their pay depends directly on the number of requests they accept, which may vary from month to month. Riders are not required to excuse their absences, even if they are prolonged absences, or for their disconnection from the app.

The digital platform does not get to decide when Riders should take a break (to which they should be entitled as economically dependent self-employed workers). Finally, there is no exclusivity agreement between the parties, so Riders can provide services for other companies or pursue other professional or personal projects. The key to deciding on the rider's status in the case under discussion was that he could reject requests, even after accepting them, he was not subject to any specific work schedule and he could work for other companies.

However, this conclusion differs from the one reached in other cases where the circumstances surrounding the provision of services were assessed differently.

Among the clearest examples is the difference in assessment of business structure. Motorcycles and cellphones are construed in some cases as Riders' main tools of the trade. However, other court decisions show that despite the fact that the cell phone and bike are the property of Riders, Riders do not have a business organization or the relevant aspect of such business organization, which is the app, which belongs to the digital platform.

In addition, while Riders' geo location system was considered an element that shows their dependence on the digital platform, which is a typical feature of employment, in other cases the court found that this was not a device to control riders but rather the way to account for the mileage for which they billed and were subsequently paid. And there was no record of the route chosen by riders.

Finally, while in some cases the fact that it was the company who decided the price of the services provided was seen as an indication of subordination, in other cases riders received almost the entire price set by/for customers, and the company received only a small commission.

Finally, it is worth mentioning that the court analyzed the company's scoring system. While in some cases the scoring systems on digital platforms have been seen as an indirect way of controlling or imposing disciplinary actions - in fact, the court recognizes that a low score for not being available in the requested time slots is an indication of employment but it is not enough to declare that there is an employment relationship. The scoring system is not used to control or impose disciplinary actions. Rather it is used to encourage riders and reward those who provide better or more services, and not as a punishment for low-scoring riders. In other words, this court ruling – whose acceptance by other Courts and Tribunals is yet to be seen- gives us the key to what will undoubtedly be the most controversial issues when defending employee status or determining whether there is an employment relationship between riders and digital platforms in this growing and unstoppable on-demand economy.

Please feel free to contact us for further information.

Best regards,

**Leading Law Firm - de Diego & Asociados** [These reports are prepared by the Senior Labor Consulting Team, a sophisticated team of specialized lawyers with more than 40 years of solid experience serving clients with the latest trends, carefully selecting topics for Human Resources executives.]