

# **CLASSIFICATION OF WORKERS UNDER THE ITALIAN LEGAL SYSTEM: CHALLENGES FROM THE PLATFORM-ECONOMY**

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# RESEARCH QUESTION

HOW CAN THE WORKERS WHO PROVIDE  
FOR THEIR ACTIVITY ON/THROUGH/IN  
FAVOUR OF PLATFORMS BE CLASSIFIED?

# WORKERS CLASSIFICATION IN THE ITALIAN SYSTEM

The Italian legal system distinguishes between two categories of workers:

## Employees

- In Italian, “*lavoratore subordinato*”
- → art. 2094 Civil Code

## Autonomous workers

- = Self-employed workers
- In Italian “*lavoratore autonomo*”
- → art. 2222 Civil Code

# WHO IS AN EMPLOYEE?

Article 2094 of the Civil Code:

- “a person who agrees to collaborate with an employer in exchange for a remuneration, performing intellectual or manual work under the direction of the entrepreneur”

# WHO IS AN EMPLOYEE?

As building block of the employment relationship, case law adopted one main general concept: the distinctive element of subordination is “eterodirection” (*eterodirezione*)

The employer exercised managerial and disciplinary powers and **determines unilaterally the way according to which the employee is supposed to perform his/her duties**

Concept of technical subordination

# WHO IS AN EMPLOYEE?

However, the “eterodirection” parameter is sometime unable to describe comprehensively the complexity of the employees’ category

It has been soon realized that “eterodirection” was an incomplete concept

# WHO IS AN EMPLOYEE?

Therefore, case law developed a wide spectrum of subsidiary factors that could indicate the presence of an employment relationship.

These factors include:

- the requirement that the worker follows work rules;
- the length of relationship;
- the respect of set working hours;
- salaried work;
- absence of risk of loss related to the production;
- the use of working tools that belong to the employer;
- the performance of working activity inside the company, etc.

This is a multifactorial test and none of these elements is dispositive

# WHO IS AN AUTONOMOUS WORKER?

Turning to autonomous workers, surprisingly a definition does not exist under Italian law

Article 2222 of the Civil Code, which governs businesses, defines “contratto d’opera” (*locatio operis*) as one carried out by a person

*“who performs work or services for remuneration, mainly by means of his/her own labour and **in the absence of a relationship of subordination** vis-a-vis the client.”*

→ *a contrario* definition



# THE JOBS ACT REFORM: MAIN STEPS

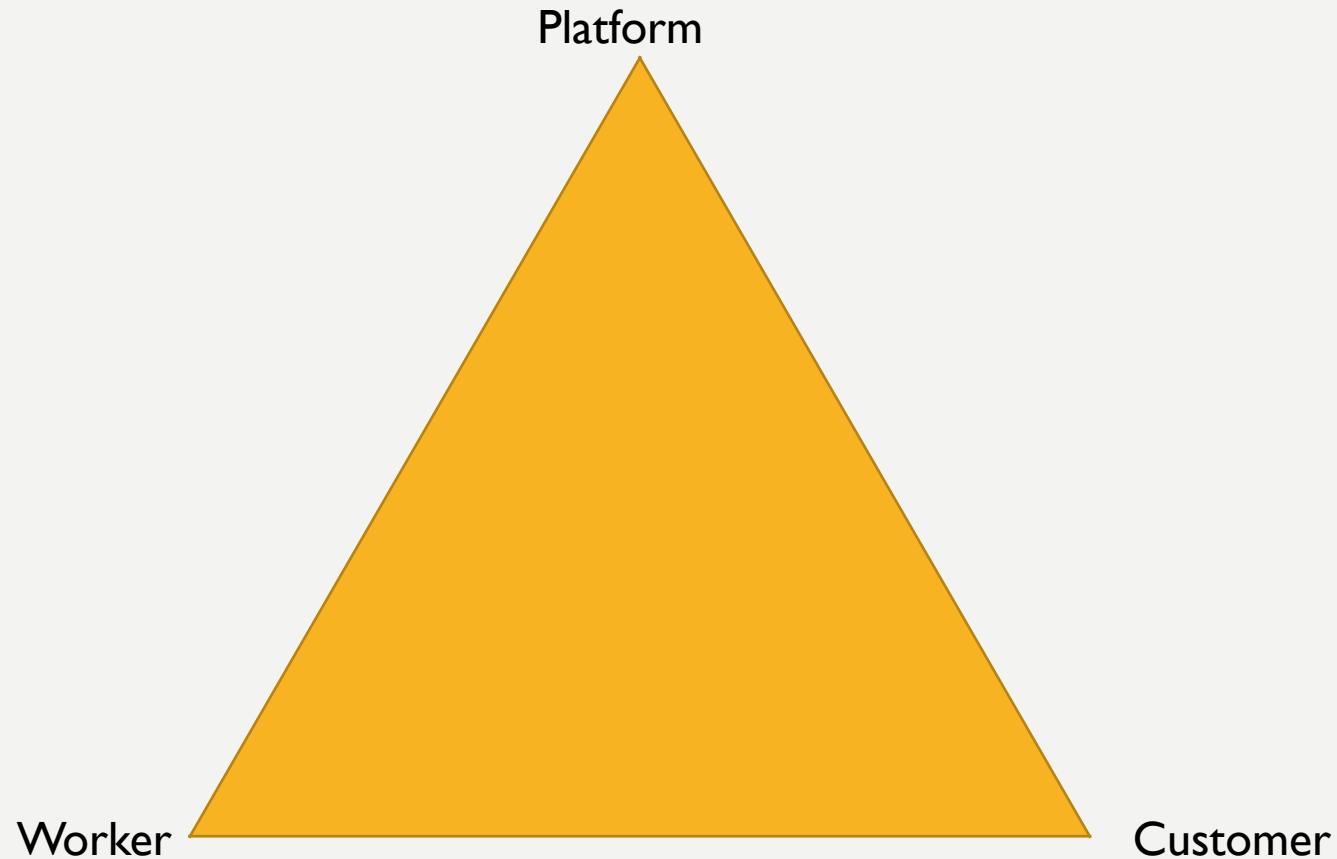
## Substantial enlargement of the notion of employee

- Definition of employee has not been formally changed
- New notion of “collaborations organized by the principal” (*collaborazioni eterorganizzate*)
- When the principal organizes the work also with reference to the **timing** and **place** of the working performance, the worker must be covered by the employment law regulations
- The worker is therefore substantially treated as an EMPLOYEE (open problem on the classification)

*Lavoro a progetto* has been abrogated

A new law on genuine autonomous workers has been adopted

# WORK IN FAVOUR OF DIGITAL PLATFORMS: SOME OBSERVATIONS



# **CASE LAW ON CLASSIFICATION OF WORKERS IN THE GIG-ECONOMY**

**1986**

**Tribunala of Milan**

# **CASE LAW ON CLASSIFICATION OF WORKERS IN THE GIG-ECONOMY**

**2018**

**Tribunal of Turin**

**Repealed by Court of Appeal of  
Turin**

# **CASE LAW ON CLASSIFICATION OF WORKERS IN THE GIG-ECONOMY**

**2018**

**Tribunal of Milan  
(currently under appeal)**

# 2 MAIN ISSUES

- 1) Obligation to work → incentives (economic)
- 2) Exercise of traditional employer's power mediated (hidden?) by the use of technology

# **Q & A**

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