

Fourth Study Commission Public and Social Law (Taiwan)

Judge Kai-Chieh, KJ Hsu

Digital Revolution Impact on the Labor Market: Platform or Gig Economy and Artificial Intelligence

1. Provide a brief description of the presence of the “gig” or “platform” economy in your country. If possible, base your answer on official public data or academic reports, although we recognize that in some cases data may not be available.

In Taiwan, the "platform economy" or "gig economy" aligns closely with the definitions observed in most countries. It revolves around digital platforms that connect supply and demand, leveraging underutilized resources to create value, thus representing a typical new economic model. Unlike traditional value chain structures, the platform economy is characterized by decentralization, disintermediation, and boundarylessness. Examples include the sharing economy and the gig economy. The sharing economy emphasizes the concept of "access over ownership," facilitating resource aggregation through exchanges, sharing, trading, or renting, such as shared transportation and shared spaces, predominantly mediated through platforms. The gig economy, on the other hand, involves platform-mediated arrangements for freelance or on-demand services like transportation, food delivery, and cleaning, often employing crowdsourcing for tasks.

These economic models overlap conceptually but emphasize different aspects. They rely heavily on information and communication technologies, including mobile devices and applications, as pivotal mediums driving the rise of new economic and work models. In Taiwan, prevalent industries include food and beverage or services, exemplified by platforms like Uber, Uber Eats, and Food Panda.

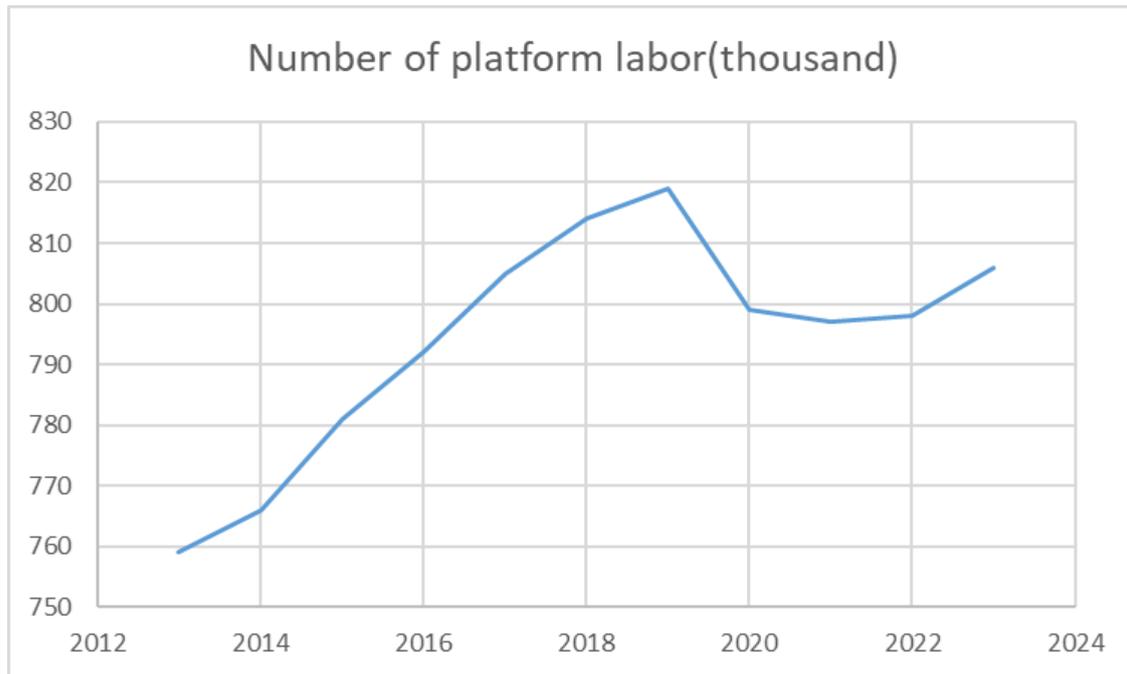
Recent statistical data illustrates a steady increase in gig economy workers annually (Figure 1), although there was a decline from 2020 to 2022 due to the impact of the COVID-19 pandemic¹. The rapid growth of the platform economy in recent years has transformed traditional work patterns, leading to an increase in gig-type employment. However, it has also blurred the distinction between gig workers and platform operators in terms of labor relations, highlighting a lack of corresponding labor protections. The pandemic has accelerated these trends.

Currently, Taiwan lacks specific regulations governing the gig or platform economy. Discussions are ongoing, referencing adjustments to labor laws adopted by other countries. These include:

- (1) Expanding the scope of labor laws to cover a broader range of employment relationships, such as California's Employee and Independent Contractor Law.
- (2) Introducing new intermediary labor categories to protect platform economy workers, as seen in Canada, Spain, Germany, Italy, and others.
- (3) Ensuring all workers in employment relationships receive labor law protections, as observed in Australia's Workplace Health and Safety laws.

¹ Government Website of the Executive Yuan
(https://www.gender.ey.gov.tw/gecdb/Stat_Statistics_DetailData.aspx?sn=AUQqPgx19cTcy2ldSFi1ZQ%40%40)

Figure 1. Number of platform labor in Taiwan



2. How does this development affect the traditional employee/employer relationship? What is the status of platform or gig workers in your country: employees, independent contractors or a third category? Is there any jurisprudential divergence regarding the status of these workers? Cite relevant examples.

(1) Non-traditional Employer-Employee Relationships

In the development of the platform economy, platform operators diversify their models for providing services by aggregating and matching a large number of workers through on-demand and crowdsourcing models. However, whether these platform workers still fall under the category of employees according to labor laws is a significant challenge in Taiwan. For instance, in the relationship between food delivery platforms and delivery riders, it is evident that the interaction goes beyond mere "matching services." Platforms often exert various forms of control over the delivery process, leading to disputes over whether such involvement constitutes "supervision

and direction" in the context of labor relations.

(2) Between Delegation and Employment Relationships

Food delivery involves the transportation of goods with specific considerations for hygiene and safety. The Ministry of Health and Welfare has categorized food delivery platforms as part of the "food logistics industry." When online platform operators assign tasks to contract personnel or hire delivery service personnel to transport food, or when they accept consumer orders under their platform name and subcontract others for delivery services, they are deemed food operators. Therefore, whether platform operators "hire delivery riders to transport food" (as seen in Taiwan's Food Panda model) or "subcontract others for delivery services" (as seen in Taiwan's Uber Eats model), platform operators must comply with Good Hygiene Practice for Food (GHP) standards.²

Based on the information provided, the delivery platform Food Panda appears to have implemented certain monitoring practices that some delivery personnel find restrictive. For instance, there's a countdown timer that starts upon receiving an order, and if the delivery isn't completed by the time it reaches zero, a loud alarm sounds for at least 15 seconds. Additionally, the platform uses facial recognition through its app to verify the delivery person's identity during the delivery process. If the person fails this verification, their access rights might be suspended³.

According to Article 490, section 1 of the Taiwan Civil Code: "A commission contract is a contract whereby one party agrees to complete a specific task for the other party, and the other party agrees to compensate upon completion of the task." Under this provision, if delivery personnel are considered commissioners, the delivery platform as the principal should not interfere with how the task (food delivery) is

² Chiu, Y. F. (2019). Fictitious contracting or genuine employment? : Analysis of labor protection and [worker identity] of platform food delivery riders. *Academia Sinica Law Journal*, 206, 64-76.

³ Ting-Yu Sung, "Exploring the Labor Relations of Gig Economy Workers in Delivery Platforms: A Comparative Study with California Regulations," presented at the 23rd National Conference on Science and Technology Law, organized by the Institute of Technology Law at National Chiao Tung University, Taiwan Association for Science and Technology Law, Enterprise Legal Center at National Chiao Tung University, and Financial Regulation and Corporate Governance Research Center at National Chiao Tung University, November 28, 2019.

performed. The platform should only compensate the delivery personnel upon completion of the task, as per the interpretation in Constitutional Interpretation No. 740, which allows for freedom in determining the method of remuneration without constituting a labor contract.

(3) Current Judicial Recognition within the Scope of Labor Contracts

However, the Ministry of Labor formulated the "Food Delivery Operations Safety Guidelines" in October 2019, revised again in early December. These guidelines include requirements for delivery service providers to implement accident prevention and handling measures, suspend operations during severe weather such as typhoons, reasonably distribute work assignments, and provide sufficient insurance coverage. These guidelines help clarify the occupational safety responsibilities that platform operators should fulfill.

Regarding the "personal performance of services" aspect, platform operators require deliveries to be personally carried out only by the applicant for delivery personnel, monitoring through methods like facial recognition via apps, and sanctioning measures such as suspension, restricting the delivery personnel's discretion in determining the appropriate way to complete the task. This contradicts the intention that commissioners have the freedom to decide how to fulfill their services.

The Taipei High Administrative Court's Judgment No. 107 Zhi 839 also pointed out that if a company uses disciplinary powers as a backing, regardless of whether actual punishment occurs, it still represents personal subordination. When delivery personnel find themselves unable to freely determine the method of remuneration under the platform operator's control, despite both parties signing a commission contract, it indicates a scenario of "sham commission, actual employment." Thus, it should be substantively recognized as a labor contract. Thus, employee should be protected by civil law more.

3. What is the impact of artificial intelligence on the labor market of your country? If possible, base your answer on official public data or academic reports. Outline the positive and negative impacts.

The impact of AI technological advancements on overall employment can be broadly categorized into negative effects, known as the "substitution effect," and positive effects, known as the "compensation effect":

(1) Negative Effects - Substitution Effect

A. Automation displaces labor: Advances in AI and automation accelerate the replacement of traditional machinery with advanced equipment, improving economic efficiency and output levels while reducing the labor needed per unit of production.

B. Shortened product lifecycles reduce enterprise investments: AI advancements shorten product lifecycles (e.g., in ICT products), leading to the risk of unemployment for production line workers unable to keep up with technological changes.

C. Structural changes in labor demand reduce employment for low-skilled workers.

(2) Positive Impact - Compensation Effect

A. Decrease in production costs enhances labor demand: Advancements in AI technology contribute to increased labor productivity, leading to synchronous decreases in production costs and product prices. Under unchanged nominal income and other conditions, this will boost overall domestic economic demand, stimulate enterprises to expand production scales and stimulate the job market.

B. Increased income promotes private consumption and corporate investment demand: Progress in AI technology will drive economic growth and increase people's income, thereby increasing private wealth.

C. Strengthening investment in human capital alleviates employment pressure: Due to the higher skill requirements of emerging technologies like AI, there is a push towards investing in human capital.

D. Technological advancement diffuses and drives employment opportunities needed for the development of new industries: As AI technology advances in production-related fields, it spreads along the industry supply chain, guiding overall economic development, expanding the social division of labor, and boosting overall employment opportunities.

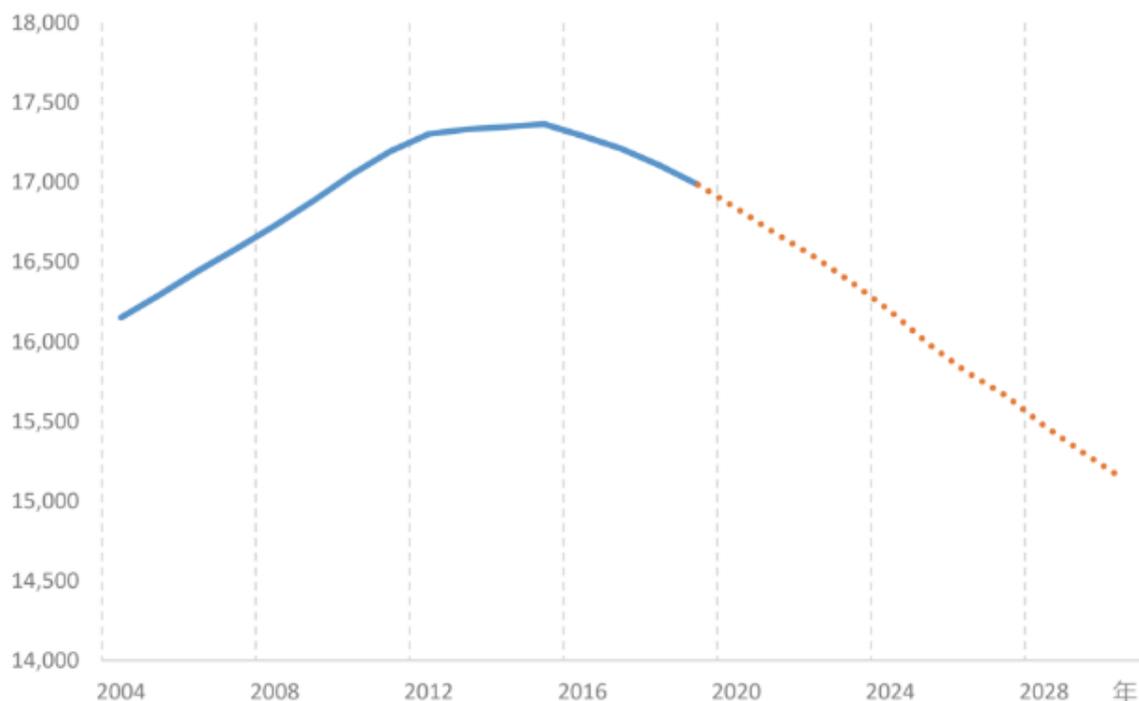
E. Globalization expands employment opportunities for labor domestically and internationally: The impact of globalization on labor demand can be divided into three levels. Firstly, international trade supports the country's overall economy, with high-tech product trade gradually increasing its share of total imports and exports in recent years, leading to increased demand for labor in high-tech industries worldwide. Secondly, foreign direct investment brings advanced technology and abundant funds to the country, positively affecting domestic exports and employment. Lastly, labor mobility internationally contributes to enhancing employment opportunities both domestically and internationally.

(3) Impact on Taiwan:

For Taiwan's overall manufacturing industry, from 2004 to 2017, the adoption of industrial robots showed a significant positive complementary relationship with labor employment. That is, the adoption of industrial robots did not replace labor but instead stimulated labor demand by boosting labor productivity. The estimated coefficient from this study ranges approximately between 5.9 to 6.1. However, over time, this positive complementary effect has shown a slight decline trend. Therefore, from a long-term perspective, whether the adoption of industrial robots adversely affects labor employment in Taiwan's manufacturing industry is worth paying

attention to⁴. Furthermore, with Taiwan's labor force declining year by year (Figure 2.⁵), it increasingly relies on AI to fill the gap in labor supply. Therefore, overall, the impact of AI on labor should be positive.

Figure 2. Changes in the working-age population in Taiwan



⁴ Chen, Y. R., & Wang, H. C. (2020). The impact of industrial robot adoption in Taiwan's manufacturing sector on the labor market. National Applied Research Laboratories Science and Technology Policy Research and Information Center.

⁵ Data source: Ministry of the Interior, Population Statistics; National Development Council, Population Estimates of the Republic of China. (<https://pop-proj.ndc.gov.tw/>)

4. Do you have any laws regulating and/or relevant judicial decisions about artificial intelligence in the labor market? What are the challenges for employers, such as privacy, transparency, secrecy, plagiarism, and the claim that artificial intelligence will be replacing workers? What are the concerns of employees?

(1) Currently, there are no directly relevant judicial cases regarding the application of AI in the labor market that can be referenced.

(2) Discussion on Relevant Policies

The impact of AI development on Taiwan's labor market has been discussed in the literature. For instance, Lin Xiao-chan (2018) pointed out that emerging technologies will lead to a reconfiguration of the labor force. This not only enhances labor market flexibility but also polarizes future labor demand, creating high-paying jobs for those with advanced skills while reducing opportunities for others⁶. This phenomenon exacerbates income inequality by concentrating benefits among capital owners and high-skilled laborers. Furthermore, there are various policy discussions, such as: Expanding protection to non-standard employment:

- A. Including non-standard employment in legal regulations. Providing non-standard employees with existing labor welfare and social protection. Establishing an independent employment security net for low-income workers and the unemployed who are unable to benefit from automation.
- B. Assisting those who do not benefit from automation: Providing unconditional basic income and implementing negative income tax to assist non-standard employment heavily impacted by automation.
- C. Additionally, considering the feasibility and necessity of implementing wage insurance: Wage insurance aims to supplement workers who must transition to new jobs due to the application of emerging technologies. It temporarily bridges

⁶ Lin, H. C. (2019). Challenges and responses of emerging technologies to the future labor market.

the gap between their previous and new salaries, thereby mitigating the impact on mid-level technical workers who are forced to accept lower-paying jobs⁷.

(3) Future Feasible Approaches

Although Taiwan published the "Artificial Intelligence Research and Development Guidelines" in 2019, there is a need to strengthen the concrete implementation of these guidelines and enhance AI ethics research. This ensures that Taiwan can develop AI technologies ethically and engage in continuous dialogue with relevant stakeholders. This approach facilitates Taiwan's agile adjustment of regulations and systems to avoid societal concerns hindering the practical application of research outcomes (such as autonomous driving and medical practices). Potential approaches to promote AI development include:

- A. Widely soliciting opinions on the necessity of establishing a national AI ethics committee to integrate cross-sectoral and interdisciplinary coordination and communication among industry, government, academia, and research.
- B. Drawing lessons from the European Union's Data Strategy and White Paper on Artificial Intelligence published in February 2020 to balance AI technological development with ethical considerations, thereby reducing potential risks to society and the economy.

⁷ King, C. T. and Tingle, K. (2015), "Wage Insurance and Wage Supplements: Review of the Literature and Supporting Data (A Report to the United States Department of Labor)," Ray Marshall Center. Austin, TX: LBJ School of Public Affairs, The University of Texas at Austin.