

# PORTUGUESE COURT DECISION: DIGITAL PLATFORM EMPLOYEES

*A landmark court ruling in Portugal has recognized the existence of an employment agreement in the context of a digital platform through the application of article 12-A of the Portuguese Labour Code, introduced under the “Decent Work Agenda Law”.*

For the first time in Portugal, the Lisbon Labour Court has acknowledged the existence of an employment agreement between a courier and a digital platform.

This landmark decision is the result of a lawsuit filed by the Portuguese Public Prosecutor's Office, following an inspection conducted by the Authority for Working Conditions (*Autoridade para as Condições do Trabalho*).

Law 13/2023, of 3 April (“Law 13/2023”), which amended the Portuguese Labour Code under the “Decent Work Agenda Law”, introduced new rules concerning the recognition of employment agreements in the context of digital platforms (new article 12-A). The existence of an employment agreement is now presumed when some of the following requirements are met in the relationship between the activity provider and the digital platform:

1. The digital platform establishes the remuneration for work performed on the platform;
2. The digital platform exercises management power and imposes specific rules, namely regarding how the activity provider presents themselves, their conduct towards the service user, or the provision of the activity;
3. The digital platform controls the provision of the activity; and
4. The platform owns the equipment and work tools used by the activity provider.

The Lisbon Labour Court ruled that all the aforementioned requirements were met, insofar as: (i) the digital platform manages the business between the courier and the service user (client); (ii) the employee provides their activity to the digital platform; (iii) the activity is provided against payment of a delivery fee; (iv) the platform exercises management power over the employee; and (v) the digital platform controls and supervises the provision of the activity, restricting the employee's autonomy.

This court decision could result in heavy contingencies for digital platforms that fail to adapt their business models to the new Portuguese labour rules. It may also have retroactive effects, as it opens the door to labour rights claims that existed before this court ruling.

In addition to the implications of this court decision, the Portuguese Public Prosecutor's Office reported filing more than a thousand lawsuits in the Portuguese labour courts based on similar assumptions. It is foreseeable that these digital platform companies will have to rethink how they employ couriers.

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Furthermore, companies providing services through couriers and digital platforms are expected to continue asserting that they are not transport providers, but mere intermediaries between the driver/courier and the customer, which is why these companies are most likely to appeal against these decisions.

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