Time to stop platforms from charging recruitment fees to workers

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By Valerio De Stefano & Mathias Wouters

Should digital platforms be allowed to charge fees to workers to work? If ordinary rules were clearly applied to platform work, the answer would be a resounding "No".

Workers should, in theory, never be charged to get work. This norm stems directly from the principle that "*labour is not a commodity*", a founding tenet of the International Labour Organisation. Asking money to allow people working as you would ask the trader of a certain good to pay to accede to a specific market (e.g. listing stocks in the stock exchange) is an evident commodification of someone's labour. Moreover, charging fees has traditionally led to severe abuses against workers, including debt bondage and wage theft.

This is why many international, European and national legal instruments have long banned charging recruitment fees to workers. The EU Directive on Temporary Agency Work prohibits these fees and the same is true for the ILO Private Employment Agencies Convention, 1997 (181) and many national regulations. Only very exceptions apply to this principle.

Yet, charging unlawful recruitment fees to workers, often disguised as payments for nominal services or by overcharging persons for real ones, such as visa or transfer handling, is still widespread around the world.

A judgement against recruitment fees in platform work

Direct or disguised recruitment fees are also common in platform work.

Workers are often asked to pay fees to accede to jobs posted by customers on digital platforms. Sometimes, no fees are required to join a platform with a standard account; however, job opportunities are scarce and not well remunerated unless the workers agree to upgrade their account and opt for "premium" services. This allows them to accede to better pools of jobs in terms of both the number of offers and the pay. Sometimes, to obtain this "premium" status workers have to complete a high number of low-paid tasks. More commonly, platforms charge fees to workers to accede "premium" services. This practice is used by both platforms channelling online work and those who offer offline services such as cleaning in households.

Platforms, therefore, often charge fees directly or conceal fees behind payments for premium services for workers that want to be offered jobs through them, something which violates or circumvents the legal instruments banning fee-charging.

In July 2019, the Amsterdam Court, in the Netherlands, ruled that charging fees to platform workers breaches the *Waadi* Act, namely the Dutch legislation on labour intermediation (text of the judgement in Dutch here).

A labour platform offering cleaning services to private households required workers to pay a fee varying from 23% to 32% for being offered a work assignment. The Court did not find that an employment relationship existed between the platform and the workers because no link of subordination of the workers to the platform was proved. This is somehow questionable, given the circumstances of the case, and the claimant is likely going to appeal against this finding.

The Court, however, ruled that the platform facilitated the conclusion of an employment contract between workers and the customers. For this reason, charging a fee to the workers violated the Dutch provisions banning recruitment fees. Accordingly, the platform was ordered to change its payment method and start charging fees to the customer: it is, in fact, typically lawful to charge fees to employers when labour intermediation occurs.

This judgement is especially interesting since it is the first known case of a platform being found to act as a labour intermediation service and to be subject to the same rules applying to employment agencies carrying out intermediation activities. Arguably, digital platforms often provide services that very closely resemble those of traditional labour market operators. Those operators, however, are commonly subject to very strict legal licensing and registration requirements as well as to regulation protecting workers, including the prohibition of recruitment fees.

Time to update existing standards on labour market intermediation

Platforms, however, very rarely comply with these requirements since they usually classify their relationship with workers, or the relationship between

workers and customers, as one of self-employment. Self-employed workers are often excluded from very basic labour protection, including fundamental labour rights. Legislation on employment agencies and labour market intermediation is also often limited to employees, leaving self-employed people outside the scope of essential protection such as the ban on recruitment fees.

In a recent publication, we argued that this situation should be reconsidered, particularly in light of the rise of platform work. Platform workers are often misclassified or do not manage to be recognised as employees. Not only this exposes them to the risk of severe abuses, but it also allows platforms to compete unfairly with traditional employment agencies, which are subject to more stringent and costly rules. We, therefore, called law and policymakers to review existing regulation on labour market intermediation to fill this loophole and to fully include platform workers under the scope of this regulation, regardless of their employment status.

Interestingly, some national laws already extend beyond the scope of the traditional standard employment relationship when it comes to labour intermediation. In the judgement above, for instance, the Amsterdam Court recognised that "the definition of worker [*arbeidskracht*] in the *Waadi* [Act on labour market intermediaries] is broader than that of an employee [*werknemer*]" under the Dutch Civil Code.

This interpretation is entirely in line with the principle that "*labour is not a commodity*" as it construes the scope of the law to encompass workers in need of protection against abuses of labour intermediaries beyond the realm of the employment contract. This is crucial to protect all workers in an era where technologies allow violations of rights and standards to spread well beyond national-regulation and employment-status boundaries.

Domestic work, platform work and unlawful recruitment fees

When it comes to domestic work channelled through platforms, as it is the case of people who are assigned cleaning jobs in private households, protecting workers regardless of their employment status is also crucial in light of the 2011 ILO Domestic Workers Convention (albeit the Netherlands have not yet ratified this Convention). The Convention mandates "measures to ensure that fees charged by private employment agencies are not deducted from the remuneration of domestic workers" (Art 15).

According to the ILO Supervisory Bodies, the Convention protects domestic workers "regardless the type of contract held by [them]", since only "persons who perform domestic work occasionally or sporadically and not on an occupational basis" are excluded from its scope. This is particularly important for countries that have ratified the Convention and where a significant market for platforms providing domestic work has already

flourished, including Belgium, Brazil, Chile, France, Germany, and Italy.

More in general, however, and beyond the critical case of domestic work, it is about time to start reviewing existing standards on labour market intermediaries to ensure that platforms acting as employment agencies do not easily shed responsibilities away and get around regulation, for the sake of both workers' protection and fair competition between all labour market operators. Safeguarding all platform workers against recruitment fees would undoubtedly be a step in the right direction.