



# Employment Law

29 June 2026

## SOUTH AFRICA

- International Labour Organization adopts landmark Convention on Decent Work in the Platform Economy
- Convenience store at petrol stations do not automatically fall under MIBCO's scope



For more insight into our  
expertise and services

## International Labour Organization adopts landmark Convention on Decent Work in the Platform Economy

On 11 June 2026, the International Labour Organization (ILO) adopted the Convention on Decent Work in the Platform Economy (Convention) at its 114<sup>th</sup> Session of the International Labour Conference in Geneva. The Convention is significant as it is one of the first international labour instruments to deal directly with work performed through digital labour platforms.



### Background

The preamble to the Convention recognises that the platform economy is “*significantly transforming the world of work*”, by creating opportunities for enterprises and business development, opening new pathways for the formalisation of work and generating work and income opportunities. At the same time, it identifies gaps in the legal and regulatory framework applicable to platform work and the need for specific standards to address the particular features of digital labour platform work.

The Convention also recognises the cross-border nature of platform work, noting that, where digital labour platforms operate across borders, clients, workers and platforms may be located in different countries. This illustrates why platform work does not always fit neatly into conventional labour law categories based on a single workplace, employer or national legal system.



## What does the Convention cover?

The Convention applies to all digital labour platforms and digital platform workers, whether in the formal or informal economy.

A “*digital labour platform*” is defined as a legal or natural person that, through digital technologies and using automated decision-making systems organises and/or facilitates work performed by persons for remuneration or payment for the provision of services upon request, whether online or in a specific geographic location.

A “*digital platform worker*” is defined as a person employed or engaged to work for services organised or facilitated by a digital labour platform, for remuneration or payment, regardless of their classification of status in employment.

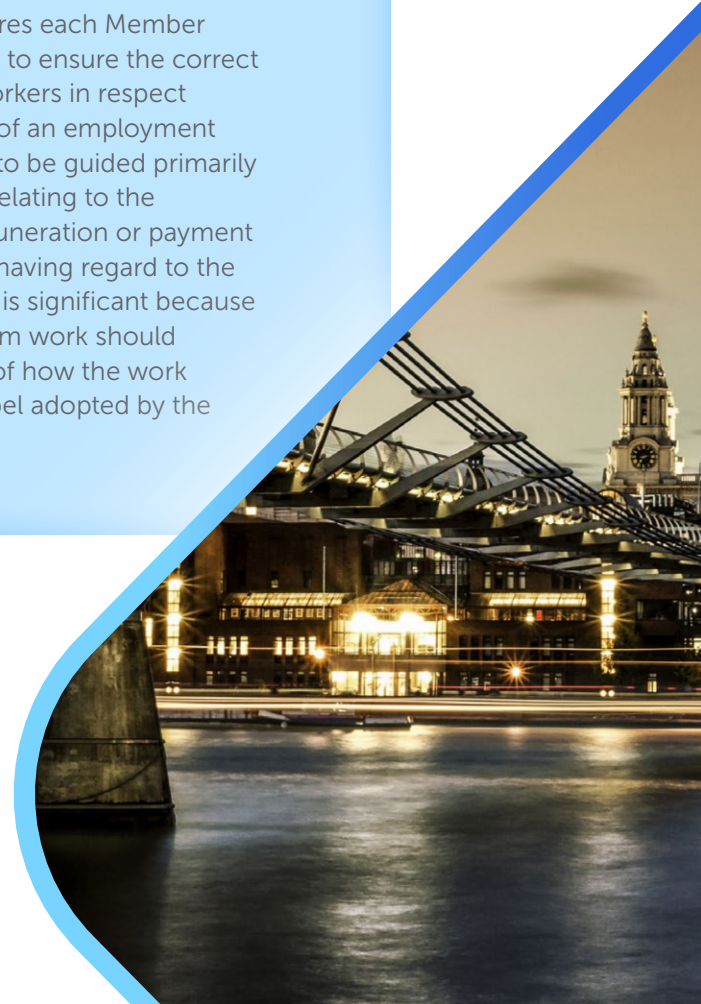
The Convention recognises the role of intermediaries in making platform workers’ services available through contractual or subcontracting arrangements. Where intermediaries are used, Member States must determine and allocate the respective responsibilities of digital labour platforms and intermediaries.

In addition, Member States may, after consultation, exclude limited categories of platforms or workers where special problems of a substantial nature arise, but must, where practicable, extend the Convention progressively to those categories.



## Classification of platform workers

A key feature of the Convention is that it does not determine whether digital platform workers are employees. Instead, Article 9 requires each Member State to take appropriate measures to ensure the correct classification of digital platform workers in respect of the existence or non-existence of an employment relationship. This determination is to be guided primarily by, among other things, the facts relating to the performance of work and the remuneration or payment of the digital platform worker and having regard to the specificities of platform work. This is significant because the classification enquiry in platform work should be grounded in the factual reality of how the work is performed, rather than in the label adopted by the platform or the worker.





## Key protections under the Convention

Member States must respect, promote and realise fundamental principles and rights at work in the platform economy, including freedom of association, collective bargaining, the elimination of forced labour and child labour, non-discrimination, and a safe and healthy working environment. It also calls for measures to promote decent work opportunities, career and skills development, and the formalisation of work via digital labour platforms.

The Convention addresses occupational health and safety, requiring prevention of occupational accidents, occupational diseases and any other injuries arising from platform work. It also extends protection against violence and harassment, including where this occurs online and by third parties such as clients and customers.

Payment to digital platform workers must be made in a timely manner, in full and by lawful means. For digital platform workers in an employment relationship, remuneration must be no lower than the applicable statutory or negotiated minimum wage, and

workers must be compensated for expenses or other costs incurred in performing the work. Member States must also consider whether minimum wage protections should extend to digital platform workers who are not in an employment relationship.

Digital platform workers must have access to social security protection on terms no less favourable than those applicable to other workers with the same employment classification. They must also receive timely, verifiable and easily understandable information on their terms and conditions, which should preferably be governed by the laws of the country where the work is performed. The Convention also prohibits account suspension, deactivation or termination on discriminatory or unlawful grounds, and secures access to safe, fair and effective dispute resolution mechanisms and appropriate and effective remedies.





### Algorithmic management and data protection

A notable feature of the Convention is its focus on automated systems. Digital labour platforms must inform digital platform workers, before their employment or engagement, about the use of automated systems to monitor, evaluate or make decisions about their work, and the impact of those systems on working conditions and access to work. Where automated systems generate decisions, digital platform workers must have access to written explanations for significant adverse decisions, as well as review mechanisms for non-payment, account suspension or deactivation, or termination. Member States must ensure also appropriate human involvement in these processes.

The Convention also contemplates *“effective and appropriate safeguards”* concerning digital platform workers’ personal data, together with the right to request *“access to, and the rectification and erasure of”* personal data processed by digital labour platforms, subject to applicable data retention laws.



### Ratification and the South African position

Article 27 of the Convention provides that it will come into force 12 months after two Member States have registered their ratifications with the Director-General of the ILO, and thereafter for each additional Member State 12 months after its own ratification is registered.

Should South Africa ratify the Convention (which it has not yet done), it would have to implement the Convention through laws and regulations, collective agreements and court decisions (or a combination of these means), or another manner consistent with national practice in line with the prescripts of the Convention. South Africa would also have to consider how existing labour, social security, data protection and occupational health and safety laws can be infused with platform work regulation, and whether further legislative or regulatory measures are required.

Even before ratification, the Convention is relevant for employers and digital labour platforms operating in South Africa as an indication of the global direction in labour standards. It highlights the importance of assessing platform work arrangements against their factual substance, including automated decision-making, payment practices, account suspension and deactivation, data protection practices, and access to effective dispute resolution.

Chambers  
TOP RANKED  
Global  
2026  
Cliffe Dekker Hofmeyr

**Band 1**  
Employment





## Key takeaways

- The Convention signals a clear global direction of regulation in the platform industry. Even before ratification, employers and digital labour platforms operating in South Africa should consider the Convention's standards as an emerging compliance benchmark and begin assessing their exposure.
- The Convention leaves open the employee vs independent contractor debate, but requires that classification be determined by the factual reality of how work is performed. Our courts and labour forums already apply a substance-over-form test under various labour laws. Digital labour platforms should review their worker arrangements against these factual determinations before any ratification or legislative reform compels them to do so. In addition, ratification is not a pre-condition for risk where our courts, labour forums and sector-specific regulators have become increasingly alive to platform work disputes. Therefore, the Convention's framework is likely to inform how those bodies interpret existing law. Employers and digital labour platforms should proactively review their contracting models, classification practices, automated decision-making processes and worker protections against the standards set out in the Convention, rather than waiting for domestic legislative reform.

- The Convention introduces protections across several areas that map directly onto internal compliance reviews that employers and digital labour platforms should be conducting. Specifically, consideration should be given to whether:
  - remuneration practices meet applicable minimum wage requirements and cover work-related expenses;
  - occupational health and safety obligations extend adequately to digital platform workers;
  - policies on violence, harassment and online conduct apply to third-party interactions;
  - digital platform workers have access to social security coverage commensurate with their classification;
  - automated decision-making systems are disclosed to digital platform workers and subject to human oversight and review mechanisms;
  - data collection, retention and erasure practices are compliant; and
  - account suspension, deactivation and termination processes are non-discriminatory and supported by accessible dispute resolution.

We will continue to monitor developments in relation to the Convention, including the ratification process and any consequential legislative amendments in South Africa.

**Lee Masuku and Sashin Naidoo**

## Convenience store at petrol stations do not automatically fall under MIBCO's scope

*In Merriman BP Service Station (Pty) Ltd v Motor Industry Bargaining Council (Western Cape) and Others (C04/2021) [2026] ZALCCT 94 (15 June 2026)* the Labour Court considered whether a Pick 'n Pay Express Store (Express Store) located at the same premises as a BP fuel station constituted an ancillary activity of the fuel station's business, and the adjuvant question of whether the Express Store's employees fell within the registered scope of the Motor Industry Bargaining Council (MIBCO). The judgment is important for employers operating co-located or multi-franchise businesses, as it confirms that shared premises and common ownership do not, on their own, determine bargaining council coverage.



### Factual Background

This matter concerned a BP service station (BP) located in Stellenbosch. The Express Store is on the same premises. Interestingly, the applicant, Merriman BP Service Station (Pty) Ltd (Merriman), was the franchisee in respect of both BP and the Express Store. The assets and stock of both were tied to Merriman. Although conceding that BP's employees fell within MIBCO's scope, Merriman disputed this insofar as the Express Store was concerned. It argued that the Express Store's transactions were processed on Pick 'n Pay's system, and the cashiers could not process BP's payments. What remained indeterminable during arbitration was whether both serviced the same customer base. The operations manager testified that despite this, the Express Store did not support BP in any way. In fact, if were to close, BP's business would not be impacted in any way. It would continue trading without any problems.





### Issue

The matter came before the bargaining council, which determined that the Express Store fell within MIBCO's scope, relying primarily on the fact that both businesses were conducted and owned by a single unified legal entity (Merriman). The arbitrator also interpreted "*separately registered establishments*" strictly to mean separately incorporated entities, concluding that the exclusion did not apply as the Express Store had not been registered under a separate corporate entity. Any secondary or attached activities to BP would fall under the motor industry unless they were of sufficient magnitude to constitute a standalone business. Because the Express Store could not survive independently of BP, it was ancillary to BP.

On review before the Labour Court, the central issue was whether the Express Store constituted an "*ancillary activity*" forming part of the filling station business under MIBCO's registered scope. The court also had to consider whether the arbitrator had correctly interpreted the phrase "*separately registered establishments*" and what standard of review applied to a demarcation award involving both legal interpretation and factual application.



### Labour Court's findings and analysis

The court rejected the arbitrator's strict reading of "*separately registered*" as requiring a separate legal entity. MIBCO's scope is concerned with economic activity, not corporate form. If "*separately registered*" meant separately incorporated, the result would be arbitrary. By way of an example, an unincorporated sole trader could be treated differently from an incorporated entity doing the same work. The exclusion refers to "*establishments*", not "*companies*" or "*employers*". Merriman's point was that the Pick 'n Pay Express was a distinct brand/franchise establishment operating separately from the filling station, even though both franchises were held by the same company.

The crux of the court's reasoning was operational interconnectedness. The court recognised that "*ancillary*" can mean either a necessary incidental activity supporting the main business, or simply an auxiliary activity conducted as part of that business. In the context of MIBCO's scope, the court favoured the latter interpretation. It is not enough that two businesses are neighbouring, complementary or commonly owned, without operational integration. The court accepted that the Express Store would not have existed without the filling station, but held that this merely explained why the Express Store was established at that location and not that the Express Store formed part of the filling station's operations. An activity is ancillary only if it is a subsidiary component of the core business, one conducted by the main business as part of its activities.

The real question was whether the two operations were integrated such that the Express Store could properly be characterised as an activity of the filling station. On the evidence, the Express Store was operationally independent. The store and forecourt operated side by side, not as one integrated enterprise. The court also noted the absence of evidence that the Express Store served the filling station's customers. While complete customer overlap may not be required, the arbitrator could not simply assume an ancillary relationship without such evidence.



## Key takeaways

Employees of a convenience store located at a petrol station will not automatically fall within MIBCO's scope merely because the store is on the same premises as the filling station.

The degree of operational interconnectedness is the central question. Common ownership, shared premises and commercial complementarity are relevant, but not decisive unless they show that the activities are genuinely integrated and conducted as part of one business.

Evidence that the convenience store actually serves the filling station's customers is important. Although a complete customer overlap may not be required, an ancillary relationship cannot be assumed without evidence of how the customer base is shared or served.

Corporate structuring is not determinative of bargaining council jurisdiction. The focus remains on the nature of the economic activity and how the business is conducted in practice.

The outcome remains fact-specific. A convenience store may still fall within MIBCO's scope where the evidence shows sufficient operational integration with the filling station's business.

**Phetheni Ramaboea, Sashin Naidoo and Ra'ees Ebrahim**

## OUR TEAM

For more information about our Employment Law practice and services in South Africa, Kenya and Namibia, please contact:



### Aadil Patel

Practice Head & Director:  
Employment Law  
Sector Head:  
Government & State-Owned Entities  
T +27 (0)11 562 1107  
E aadil.patel@cdhlegal.com



### Anli Bezuidenhout

Director:  
Employment Law  
T +27 (0)21 481 6351  
E anli.bezuidenhout@cdhlegal.com



### Frieda Kishi

Director | Namibia  
T +264 83 373 0100  
E frieda.kishi@cdhlegal.com



### Fiona Leppan

Director:  
Employment Law  
T +27 (0)11 562 1152  
E fiona.leppan@cdhlegal.com



### Imraan Mahomed

Director:  
Employment Law  
T +27 (0)11 562 1459  
E imraan.mahomed@cdhlegal.com



### Nadeem Mahomed

Director:  
Employment Law  
T +27 (0)11 562 1936  
E nadeem.mahomed@cdhlegal.com



### Yvonne Mkefa

Director:  
Employment Law  
T +27 (0)21 481 6315  
E yvonne.mkefa@cdhlegal.com



### Phetheni Ramaboea

Chief Operating Officer  
Director: Employment Law  
T +27 (0)11 562 1478  
E phetheni.ramaboea@cdhlegal.com



### Desmond Odhiambo

Partner | Kenya  
T +254 731 086 649  
+254 204 409 918  
+254 710 560 114  
E desmond.odhiambo@cdhlegal.com



### Jean Ewang

Counsel:  
Employment Law  
T +27 (0)11 562 1499  
E jean.ewang@cdhlegal.com



### Thabang Rapuleng

Counsel:  
Employment Law  
T +27 (0)11 562 1759  
E thabang.rapuleng@cdhlegal.com



### JJ van der Walt

Counsel:  
Employment Law  
T +27 (0)11 562 1289  
E jj.vanderwalt@cdhlegal.com



### Ebrahim Patelia

Legal Consultant:  
Employment Law  
T +27 (0)11 562 1000  
E ebrahim.patel@cdhlegal.com



### Daniel Kiragu

Senior Associate | Kenya  
T +254 731 086 649  
+254 204 409 918  
+254 710 560 114  
E daniel.kiragu@cdhlegal.com



### Biron Madisa

Senior Associate:  
Employment Law  
T +27 (0)11 562 1031  
E biron.madisa@cdhlegal.com



### Thato Maruapula

Senior Associate:  
Employment Law  
T +27 (0)11 562 1774  
E thato.maruapula@cdhlegal.com



### Lee Masuku

Senior Associate:  
Employment Law  
T +27 (0)11 562 1213  
E lee.masuku@cdhlegal.com



### Leila Moosa

Senior Associate:  
Employment Law  
T +27 (0)21 481 6318  
E leila.moosa@cdhlegal.com



### Christine Mugenyu

Senior Associate | Kenya  
T +254 731 086 649  
+254 204 409 918  
+254 710 560 114  
E christine.mugenyu@cdhlegal.com



### Kgodisho Phashe

Senior Associate:  
Employment Law  
T +27 (0)11 562 1086  
E kgodisho.phashe@cdhlegal.com



### Taryn York

Senior Associate:  
Employment Law  
T +27 (0)11 562 1732  
E taryn.york@cdhlegal.com

## OUR TEAM

For more information about our Employment Law practice and services in South Africa, Kenya and Namibia, please contact:



**Rashaad Dadoo**

Associate:  
Employment Law  
T +27 (0)21 481 6317  
E rashaad.dadoo@cdhlegal.com



**Chantell De Gouveia**

Associate:  
Employment Law  
T +27 (0)11 562 1343  
E chantell.degouveia@cdhlegal.com



**Ra'ees Ebrahim**

Associate:  
Employment Law  
T +27 (0)11 562 1735  
E raees.ebrahim@cdhlegal.com



**Lehan Goosen**

Associate:  
Employment Law  
T +27 (0)21 481 6319  
E lehan.goosen@cdhlegal.com



**Ayesha Karjieker**

Associate:  
Employment Law  
T +27 (0)11 562 1568  
E ayesha.karjieker@cdhlegal.com



**Thato Makoaba**

Associate:  
Employment Law  
T +27 (0)11 562 1659  
E thato.makoaba@cdhlegal.com



**Sashin Naidoo**

Associate:  
Employment Law  
T +27 (0)11 562 1482  
E sashin.naidoo@cdhlegal.com



**Billy Oloo**

Associate | Kenya  
T +254 731 086 649  
+254 204 409 918  
+254 710 560 114  
E billy.oloo@cdhlegal.com



**Melisa Wekesa**

Associate | Kenya  
T +254 731 086 649  
+254 204 409 918  
+254 710 560 114  
E melisa.wekesa@cdhlegal.com

**BBBEE STATUS:** LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

**PLEASE NOTE**

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

**JOHANNESBURG**

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa.  
Dx 154 Randburg and Dx 42 Johannesburg.  
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E [jhb@cdhlegal.com](mailto:jhb@cdhlegal.com)

**CAPE TOWN**

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.  
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E [ctn@cdhlegal.com](mailto:ctn@cdhlegal.com)

**NAIROBI**

Merchant Square, 3<sup>rd</sup> floor, Block D, Riverside Drive, Nairobi, Kenya. P.O. Box 22602-00505, Nairobi, Kenya.  
T +254 731 086 649 | +254 204 409 918 | +254 710 560 114  
E [cdhkenya@cdhlegal.com](mailto:cdhkenya@cdhlegal.com)

**ONGWEDIVA**

Shop No. 94, Oshana Mall, Ongwediva, Namibia  
T +264 (0) 81 287 8330 E [cdhnamibia@cdhlegal.com](mailto:cdhnamibia@cdhlegal.com)

**STELLENBOSCH**

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.  
T +27 (0)21 481 6400 E [cdh Stellenbosch@cdhlegal.com](mailto:cdh Stellenbosch@cdhlegal.com)

**WINDHOEK**

2<sup>nd</sup> Floor, 4@Steps - East Tower, Hilltop Estate, Kleine Kuppe, Windhoek.  
PO Box 97115, Maerua Mall, Windhoek, Namibia, 10020  
T +264 833 730 100 E [cdhnamibia@cdhlegal.com](mailto:cdhnamibia@cdhlegal.com)

©2026 15968/JUNE

