

## INTRODUCTION

This thematic briefing seeks to broaden discussions on the relationship between the future of work and the gig economy, through dialogue with contexts and discussions existing in Argentina, Chile, Colombia, and Mexico, countries that, just like Brazil, have faced questions and social, economic, technological and regulatory debates on the matter. We are interested in exploring how the countries' agendas are related based on the three guiding axes of the research conducted by CEPI FGV Direito SP: (i) regulation and public policies; (ii) inequality and social security; and (iii) algorithms and automation. To that end, an analysis was performed on legislative texts, government reports and those of Latin American institutions addressing the subject. Enjoy your reading!

### Key findings

1. Platform-based work is being debated in Latin America, with no specific regulations approved in Argentina, Chile, Colombia and Mexico. The following axes prevailed in mapping conducted on these countries: (i) regulation and public policies and (ii) inequality and social security.
2. In Argentina and Mexico, discussions were prevalent on the characterization of the legal relationship between platforms and providers. In Chile, issues were predominantly focused on providers' right to information. In Colombia, the main theme was social security in app-based work.
3. As in Brazil, there are discussions in the analyzed countries about the (in)existence of subordination in the relationship between platforms and providers (and, consequently, the characterization of a labor or civil relationship) and issues related to social security.
4. Particularities were found in the analyzed countries, such as a social security program for people with an income below the minimum wage and criteria for parameterizing subordinate work.

## OVERVIEW

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According to the International Labour Organization's 2020 Latin American Panorama Laboral, one of the labor changes observed in Latin America is related to the emergence of digital work platforms (**Figure 01**).

Delivery platforms took center stage in the context of the pandemic. The restriction measures on circulation adopted by most countries, the closing of physical stores and the caution with social distancing drove people to consume more online, fostering growth in the sector. According to the ILO, during the second half of March and early April 2020, online sales rose 28% in Bogota, 119% in Chile, and 300% in Argentina, compared to the weeks before the beginning of the isolation measures associated with COVID-19 (ILO, 2020, p.81).

For the ILO, the pandemic ended up accentuating phenomena of the digital revolution and new challenges linked to the work conducted by digital platforms. The Organization estimates that the increased demand for this type of services will impact working conditions in the sector. However, it is unknown whether the effects and trends resulting from this situation will remain in the long run.

As a result of these transformations, the countries presented several measures to address the situation. The ILO report also points out that during the pandemic, there was an acceleration in the legislative process for bills that were pending, as well as the presentation of new proposals aimed at regulating platform-based work, since it became a highly visible sector. Some of these measures will be the focus of this thematic briefing.

## METHODOLOGICAL NOTES

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Three criteria were used to select the countries to be studied in this work: (i) classification of the countries that most use smartphones in proportion to their population (GSMA, 2020), (ii) panorama of the application market (APPYFLYER, 2020) and (iii) the percentage of the population covered by Uber (IDB, 2019), which resulted in the selection of: Argentina, Chile, Colombia and Mexico.

Data and information was collected on two complementary fronts: (i) legislative survey in the legislative houses of each country, covering proposals to statutory law underway and legislative texts approved since 2010 and (ii) literature review on the subject. The following keywords were used on both fronts: *"trabajo*

*bajo demanda"; "trabajo de plataformas"; "Trabajo + aplicaciones"; "plataformas digitales"; "gig economy" and "crowdwork".*

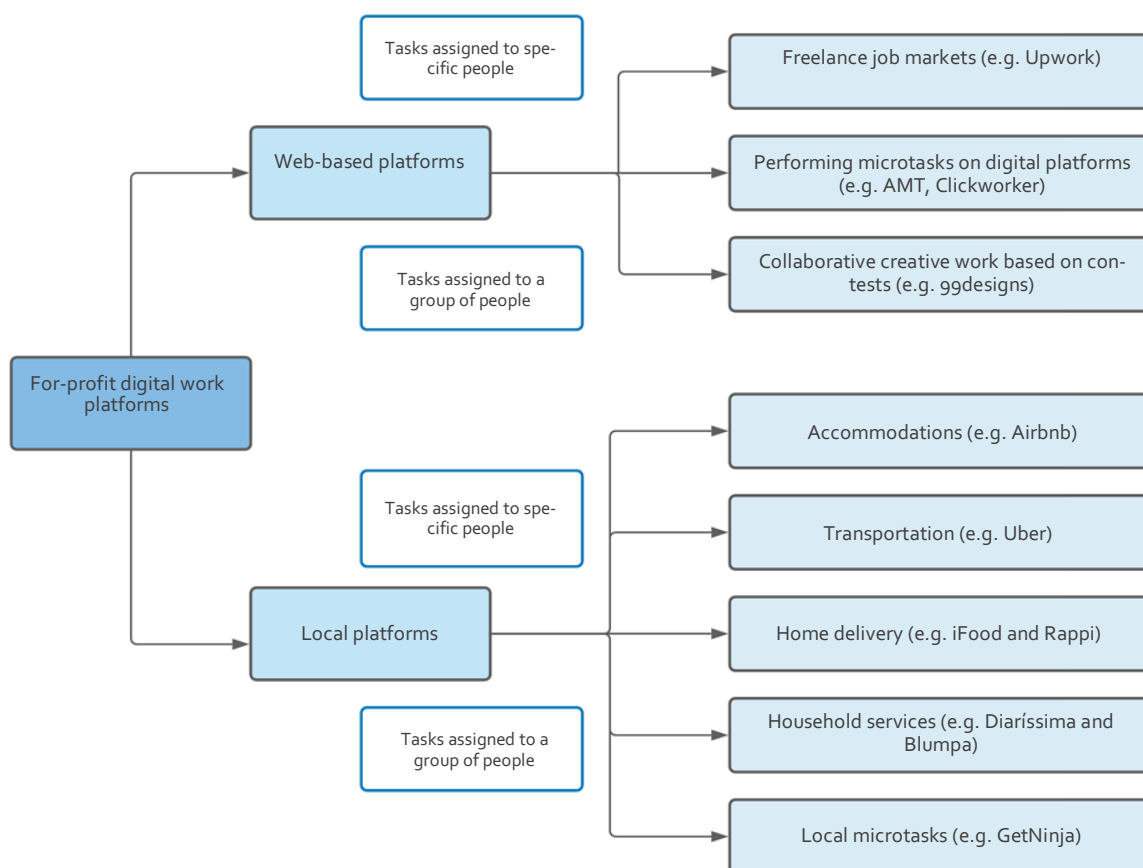
The mapped studies and bills were analyzed based on the guiding principles of the project: (i) regulation and public policies, (ii) inequalities and social security; and (iii) algorithms and automation. Finally, in order to systematize and organize all the content, a classification table was produced containing all the proposals to statutory law (Bills) and reading sheets for the selected texts. A total of 99 Bills in Argentina, 33 Bills in Chile, 83 Bills in Colombia and 84 Bills in Mexico were analyzed.

Assessing the thematic relevance of working in the gig economy and discarding archived

proposals, 4 Bills in Chile, 7 Bills in Argentina, 11 Bills in Colombia and 4 Bills in Mexico were selected. For Colombia, it was not possible to access the content of five legislative proposals<sup>1</sup>, which were not considered in this analysis. One of the proposals in Mexico was converted into a normative act<sup>2</sup>.

With the exception of the proposals that could not be accessed, all the others were considered in the scope of this analysis. In addition to these, a total of 23 reports were considered that addressed the topic by country and/or explored the context of Latin America as a whole.

**Figure 1:** Flowchart of digital work platforms



Source: adapted from CEPAL (2019).

<sup>1</sup> It was not possible to access the content of the following proposals to statutory law: 242/2020C, 199/2020C, 274/2020, 296/2019C and 003/2020C (accumulated with proposals 174, 185, 199 Y 242 of 2020C).

<sup>2</sup> This is the Bill from 2017 that changed the income tax legislation.

## REGULATION AND SOCIAL SECURITY UNDER DEBATE

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The research on the subject “platform-based work” in the 4 selected countries was based on 3 main axes: (i) regulation and public policies; (ii) inequalities and social security; and (iii) algorithms and automation. The algorithms and automation axis did not return significant results in the countries. As such, we only discuss the first two axes below.

For the purposes of this discussion, definitions related to the topic (e.g. platforms, providers), regime characterization (labor law, civil law) and obligations of the players involved are considered to be objects of **regulation and public policy**. For discussions on **inequalities and social security**, working conditions (e.g. food and meals, rest, duration, information, health and safety), social dialogue and benefits (e.g. remuneration, education, health etc.) were considered.

### ARGENTINA

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Most of the platforms operating in Argentina adopt the intermediation model of services by “independent” workers, thus leaving said workers with the responsibility for the payment of social security contributions. A particular case is that of Zolvers, which operates in the domestic services sector: upon hiring the service, labor charges, which include contributions to the social security system, are passed on to the customer. Some companies (e.g., IguanaFix, Ando, Rappi and Glovo) require that workers registered on their platforms be registered under the general or *monotributo* (single tax) regime. Others, such as Uber, do not require registration, but withhold a fee for those who are not enrolled in the single tax regime (MADARIAGA et al, 2019, p. 28).

In Argentina, **regulation** was found to be the prevailing axis in legislative discussions, with the majority of bills characterizing platform-based workers as self-employed. In the Bill mapping, it was also found that most of the

projects underway intend to establish a **regulatory framework** in the country. In two of the proposals to statutory law, it was found that the characterization of the worker as dependent or independent is the result of the number of hours dedicated to work on the application (Bill 3482-D-2020).

On the axis that addressed issues related to inequality, matters related to the **duration of work and workers’ rest** stood out in the Bills. These agendas are related to the definition of maximum working hours and the duty of the platforms to disconnect workers. Issues related to **information** are also relevant to the debate in the country, appearing in 5 of the 7 Bills analyzed. This agenda is associated with the disclosure of remuneration criteria, definition of criteria for disconnecting workers from the platform and provisions associated with prior notice for worker termination.

The issue of **social security** also deserves to be emphasized, even in projects that consider



workers as self-employed. The debate on accident insurance is present in 6 of the 7 bills analyzed. It was also possible to identify proposals that addressed maternity leave and other types of insurance, such as, for example, the provisions of Bill 0821-D-2020, which establishes that workers on digital platforms are entitled to the universal basic benefit, retirement for disability and pension for death, mandatory medical program and healthcare coverage. Those established in Bill 3652-D-2020 include: medical assistance in cases of maternity, common or professional illness and accidents (whether at work or not), contracting civil liability insurance, accident coverage in the provision of services and inclusion of workers in the coverage of the law on work-related risks. A noteworthy feature of this bill is the provision that payments for the insurance regime should be transferred through digital platforms, establishing an installment

to be paid by the worker and another by the company. It should be noted, however, that there was a provision in another bill stating that the contribution should be made by the worker alone.

As a particularity in the projects analyzed in Argentina, it is worth mentioning the proposal to create the Labor Court for Humans who Work on Digital Platforms and a National Commission on Digital Platform-based Work, with the following duties: define minimum wages and establish worker categories; promote compliance with workplace health and safety standards; advise national bodies; conduct training actions (Bill 0821-D-2020).

Another particularity was the creation of the National Commission for the Development and Legislation of the Collaborative Economy and Digital Platforms, which would be responsible for applying the provisions of Bill 3652-D-2020.


## CHILE

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The legal nature of the existing contractual relationship between service providers and digital platforms is also controversial in Chile. For example, taxi drivers in Chile are considered to be self-employed, a categorization that could be extended to drivers on digital platforms, as they can also determine their working hours. (COMISIÓN NACIONAL DE PRODUCTIVIDAD, 2020, p. 62). It so happens, however, that, on the one hand, Chilean legislation does not yet have specific regulations on platform-based work and, on the other hand, judicial litigation is still in its initial

stages, to the point that a consolidated jurisprudential position on the issue cannot be identified (VÉLEZ, 2020, p.1).

Considering the legislative debate in Chile, four proposals to statutory law were mapped that are underway and intend to provide some form of regulation for work on digital platforms. It can be identified that the topic gained more prominence with the pandemic, even though there is no express mention of COVID-19 in the Bills, as a technical panel was created to discuss issues related to working on digital platforms. The aforementioned



panel was created by the *subsecretaria del trabajo* of Chile and consists of the *Subsecretario del Trabajo, Consejo Superior Laboral, Comisión Nacional de Productividad* and by advisors for the senators that make up the *Comisión de Trabajo do Senado*. It was decided that its duties will include studies on matters related to the operation of on-demand economies and applications offering services in the Chilean territory.

The following stand out among the initial **conclusions of the panel**: (i) the need to consider protection mechanisms in matters of social security for those who provide services through digital platforms; (ii) recognition of the need to generate special rules for the protection of personal and sensitive data that are stored and registered on the platforms; (iii) the need for platforms to consider transparency mechanisms in relation to service and payment conditions, which could be subject to future regulation.

In the interface with the regulatory dimension, **workers' freedom** is explored from different perspectives. Highlights of these proposals include the right to choose the hours in which they work, provided the work day is broken up and covers a maximum of 6 hours. For public health and safety reasons, the working day cannot exceed twelve hours a day, nor forty-five hours a week (Bill 12475-13). Also with respect to **social security**, professionals must be affiliated and contribute according to the rules on workplace accidents and diseases (Law No. 16.744). Likewise, according to Bill 12475-13, Service Platforms must have damage insurance for the implements necessary to perform the service and

that are provided by the worker for such purpose. They also address conditions for remuneration, termination and transparency, such that, when signing the contract, service platforms must inform the criteria used to attribute the provision of a service, how remuneration is calculated, how data is collected from the worker, the impact of the qualifications assigned, as well as any other relevant criteria for the performance of the position or for exercising and respecting their rights. Two bills specify that the relationship between workers and platforms gives rise to a relationship to be regulated by the Labor Code, while one of the bills mentions that this is not an employment relationship (Bill 12618-13). It can be perceived, however, that even in projects in not considered to form an employment relationship, there are proposals for minimal protection.

With respect to security, it is worth noting that the biggest concern in Chile addresses the institution of health insurance for workers. Bill 13496-13 contains further specifications with regard to social security, establishing installments regarding workplace accident insurance, disability insurance, civil liability insurance, and unemployment insurance, installments for which the digital platforms are responsible. Another point of concern in proposals to statutory law underway in Chile concerns the **right to information**. The demands for information are related to: terms and conditions for determining prices and incentives for the provision of services; criteria for assigning services; workers' personal data is collected; reasons for disconnection from the platform and prior notice of such disconnection (Bill 12618-13).

## COLOMBIA

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As reported by the Colombian Ministry of Labor in October 2019, the then Vice Minister of Labor Relations and Inspection and current Vice Minister of the Interior, Baena López, mentioned that, although the government is committed to the cause of regulating the platform economy scenario, the topic must be carefully studied, since there are several particularities that must be taken into account.


In Colombia, there are no rules that regulate work intermediated by digital platforms, so it is unclear what the obligations of digital platforms are with regard to the workers who provide the services (YANITZA, 2019, p.157). This new structure of relations between worker and digital platform represents a challenge, as Colombian legislation does not provide answers for the new labor reality in the country in the scenario of platform economics, making it difficult to identify when dealing with an independent worker, self-employed worker or an employee (YANITZA, 2019, p.156). Digital platform workers in the country provide services without being bound by the General Social Security System, thus, until now, platforms are under no obligation to verify the registration or register and contribute for these workers in the System (YANITZA, 2019, p.160).

The lack of clear obligations established by law and which should be fulfilled by the platforms (YANITZA, 2019), in addition to **the difficulty for the players involved to reach a consensus** on how to regulate these activities

(PAREDES, 2018), are elements to be considered. The report (PAREDES, 2018) highlights that there is also no consensus among the delivery personnel that it would be better for them to be affiliated to the social security and retirement system. Another relevant point is to understand that the way the public and private Colombian social security system is structured does not help protect workers in the context of digital platforms, since it was designed for long-term plans based on a stable salary, as stated by Paredes (2018). In this context, it would be necessary to think of other, more flexible means of protection for platform-based workers. Different from the countries presented so far, a prevalence of the social security and regulation axes in Colombia was verified in the legislative debate. To address social security, the Bills presented definitions – of platforms and providers – and the characterization of the existing legal regime between providers and platforms.

Of the 6 Bills analyzed, 1 regulates the professional activity of application-based drivers, 2 Bills seek to provide minimum social guarantees for providers on digital platforms (regardless of the characterization of the legal regime) and 3, in addition to the provisions on social security, are also concerned with defining the character of the existing relationship between providers and platforms, framing it as a civil relationship (and not an employment relationship) and considering the provider as self-employed.





Bill 246/2020 stands out with respect to the **characterization of the regime**. Such proposal defines providers as self-employed. However, it presents the possibility of having, alternatively and exceptionally, a labor relationship agreed voluntarily, if the provider and platform so decide and, in such cases, the relationship will be governed by the *Código Sustancial del Trabajo* and will be entitled to all labor rights set forth therein. In such cases, the platforms must inform the number of vacancies available for the labor modality and will be able to set working hours, exclusivity, operating area, among others.

With the exception of Bill 292/2019, which regulates the exercise of the activity of transporting passengers by digital platforms, the other Bills intend to guarantee **social protection** to providers of the gig economy and do not focus on the opposition between self-employed provider versus subordinate provider. The characterization as a self-employed provider does not prevent the search for social protection in these legislative proposals. In this sense, the Bills seem to be more concerned with social security than with the obligations of platforms and providers with regard to working conditions themselves, even though many Bills were introduced during the Covid-19 pandemic.

In relation to **social security**, in general, the Bills establish the obligation for providers to be registered and contribute to the social security system. The responsibility for the cost of this contribution varies according to the Bill: there are Bills that assign the payment obligation to the provider, others that share this obligation among the players (provider, platform and intermediaries), and there are

other Bills that assign responsibility to platform. It was noted that the Bills are quite detailed in relation to the procedures for this contribution. In addition, the proposals create different rules for the provider who earns income above the minimum wage and for those who earn income below the minimum wage.

This is due to the Colombian model of Periodic Economic Benefits (BEPS), a program intended for Colombian citizens over the age of 18 who have an income below the minimum wage, such as self-employed workers, who can now contribute to this system in order to guarantee their retirement.

In this regard, they also mention the obligation created by Bill 246/2020 of the platform having insurance against accidents and loss of income (situations of incapacity at work, for example) for providers. In Bill 85/2020 and 246/2020, the concern with the **transparency** of actions and working conditions on the platforms also stands out, defining rules for the agreement between providers and platforms. There is a certain concern in Bill 85/2020 with **certifying the qualification** of the provider, as it determines that if the provider (called contracting employee in the Bill) is subject to qualifications by the platform, users or end customers, the qualifications will belong to the provider and the platform will be obligated to deliver and certify such qualifications.

Finally, the provisions of Bill 246/2020 on instruments of **social dialogue** stand out, establishing that platforms must have mechanisms for participation and representation, so that providers can collectively participate in discussions on changes to connection terms and conditions.



## MEXICO

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Mexican labor legislation, derived from the Federal Labor Law (LFT), does not include any special category for digital platform-based workers (BENSU-SÁN, 2020). However, as for the links between government players and digital platforms, efforts that began in June 2020 by the *Servicio de Administración Tributario* (SAT) stand out. This agreement subjects foreign companies that provide digital services through applications to the obligation to pay Value Added Tax (VAT) for their activities. Likewise, if these technological platforms, national or foreign, also provide intermediation services, they must withhold VAT and Income Tax (ISR) for the individuals who perform these activities. Therefore, platform-based workers must update their tax obligations in the Federal Taxpayer Registry (HACIENDA, 2020).


According to Bensusán (2020), one of the first challenges to be faced with regard to the regulation of work on platforms in Mexico is related to the measurement and better statistical characterization of the activities and workers linked to them, as well as the profile of those who handle the requests, considering aspects such as sex, age, education, socioeconomic strata, etc. Regulatory initiatives took place in the country through changes in the Constitution, the Federal Labor Law and the Income Tax Law, based on the idea that new job generation could not neglect the quality and well-being of workers.

In this context, the COVID-19 pandemic highlighted the consequences of high levels of informality, the greater vulnerability of those in temporary formal jobs and the absence of unemployment insurance, which should lead to urgent measures in the field of employment, including those that contemplate protection of workers in the digital economy.

It is worth mentioning that, one of the Bills in Mexico was transformed into a normative act. It is a 2017 proposal that modified article 94 of the income tax legislation to consider as income the amounts earned by those who provide transportation services through digital platforms. Although such a provision does not seem to be connected with the regulation of the relationship between providers and platforms as a central topic, the *caput* of Article 94 mentions that income from the provision of subordinate personal service, wages and other benefits arising from the **employment relationship** are considered. Thus, when considering the income of those providing transportation services through digital platforms as a salary, it ends up recognizing that they are inserted in an employment relationship.

The other Bills analyzed, all underway and proposed between 2019 and 2020, modify the Mexican federal labor law to include a chapter on work performed by digital platforms.

One hypothesis that can explain this unanimity in characterizing providers as workers is that the law on income tax provided that such



relationship is labor, without specifying the rights and duties of the parties. As such, the 3 Bills proposed years later and which are currently underway modify the federal labor law to include the consideration that work on digital platforms is characterized as labor.

In proposing changes to labor legislation, the proposals intend to regulate different aspects of the platform-provider relationship. Bill 11/11/2020<sup>3</sup>, for example, regulates the form of remuneration (per delivery, work time, hour, among other modalities) and tips, workers' autonomy to define the working day (with the possibility of working overtime via platform authorization), right to disconnect, establishes obligations for the worker (how to care for work instruments, for example) and for platforms (how to provide work tools, for example). In the analyzed Bills, the **definition of elements that configure worker subordination** contained in Bill 11/05/2019 is noteworthy, according to which "elements used to determine the existence of a subordination relationship include direction and control for the performance of the activity of providing transportation services to people or goods, regardless of the degree of their manifestation, as well as the insertion of the worker in the organization of the company." Although it is an open guideline and subject to debates about how to define insertion of the worker in the organization of the company, for example, it is useful to establish criteria to parameterize what is or is not characterized as subordinate work.

The same Bill defines workers in the collaborative economy or digital applications for the provision of services and/or delivery of goods to be "those who perform work through a digital application, are governed by a reputation system, are penalized if they do not accept an offer for work within a certain period and must comply with certain internal standards of the company to provide its services."

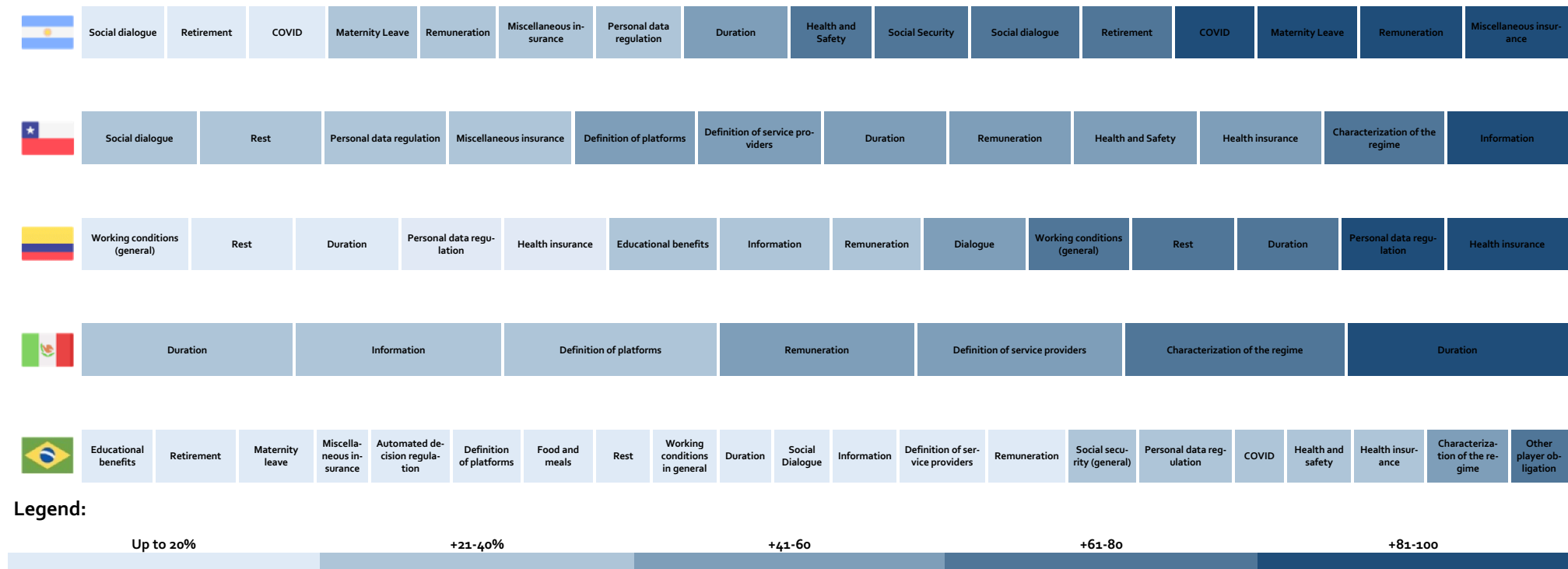
Note that the definition presupposes the practice of evaluation and punishment in the case of refusing the job offer. The Bill also creates two types of work on the platforms – full-time workers (those who dedicate at least six or more hours, at least five days a week, constituting an economic dependency) and part-time workers (those who do not comply with the requirements for the full-time characterization) –, but considers that the two modalities constitute an employment relationship.

Finally, we highlight the provisions of Bill 11/11/2020 which, assuming the existence of a subordinate relationship, address the duty of the platform to monitor the provider using a geolocation tool to ensure their safety during the time actually worked and consider inactivity of the worker for more than 60 days provides cause for termination of the employment agreement (although it allows the workers to freely dispose of their working time). Thus, it can be noted that the Bill articulates elements of autonomy in this subordinate relationship.

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<sup>3</sup> In Mexico, Bills have no numbering or other form of identification besides the summary statement. Thus, we used the date of the bill's proposal as identification.

Figure 2 – Thematic map by country



Source: Own preparation

## FINAL COMMENTS

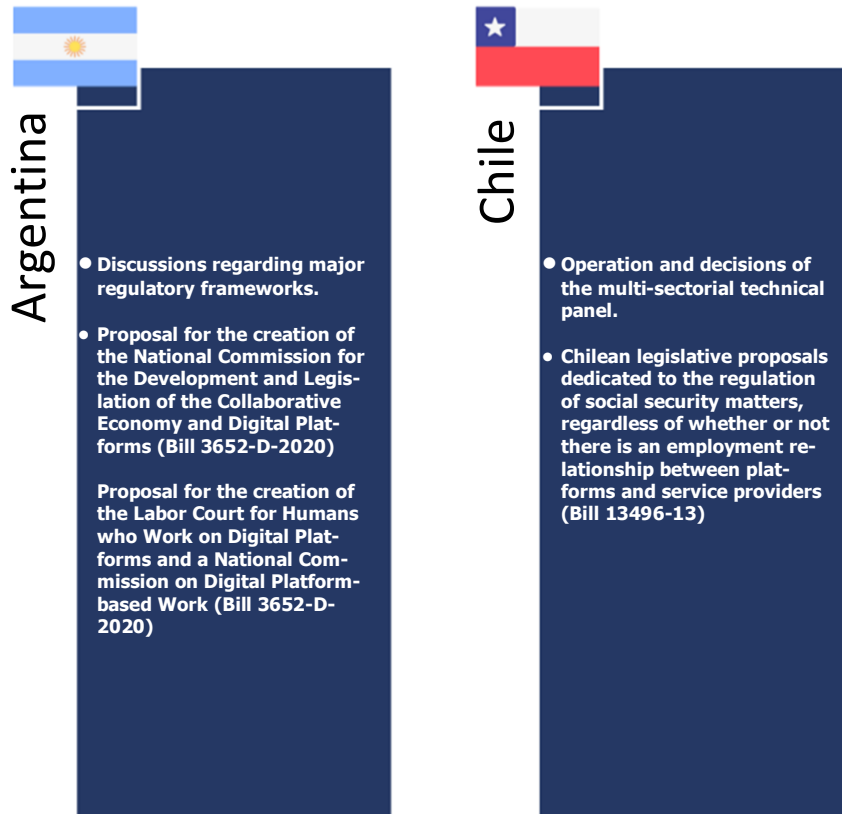
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After analyzing the reports and proposals to statutory law of the four selected countries in Latin America, we found that the major issues discussed – (i) regulation and public policies and (ii) inequality and social security – are in line with what is being debated in Brazil.

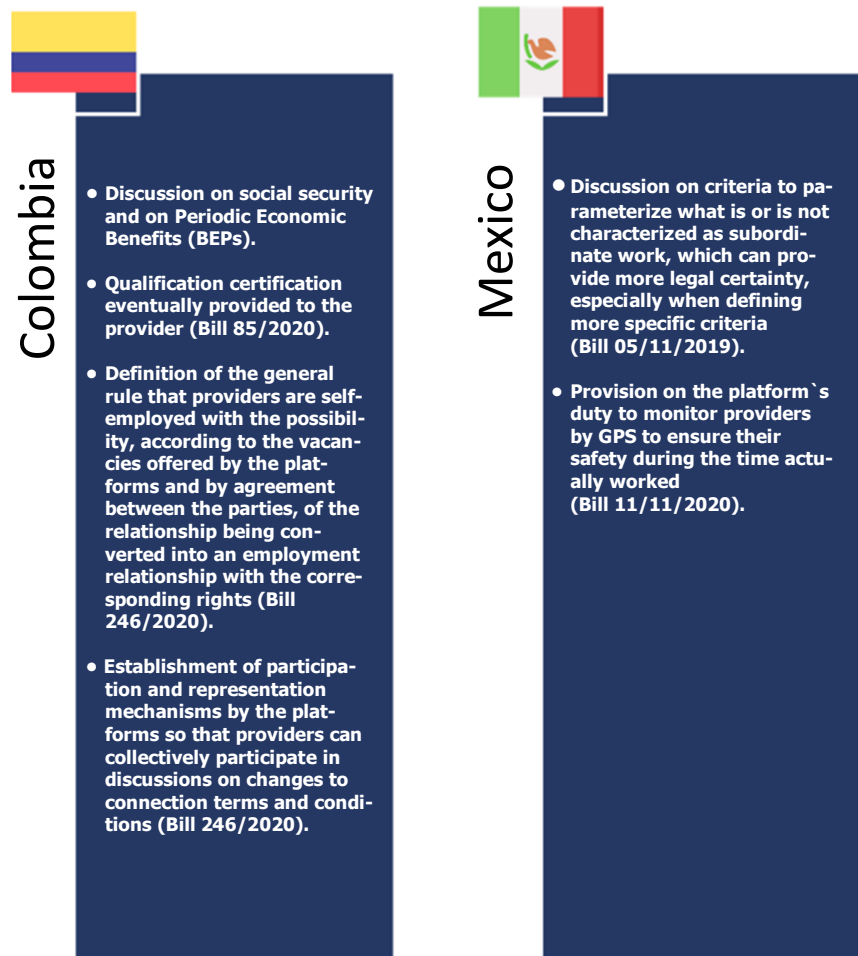
Finally, we highlight the following key findings of the relationship between the debate on platform work in Brazil, Argentina, Chile, Colombia and Mexico, as shown in **Figure 02**.

1. In Brazil, the legislative proposals expressly mentioned the health crisis caused by Covid-19, which was not generally seen in the other countries (except in one Argentine Bill).
2. In Brazil, Covid-19 strongly influenced the discussion of the topic in the National Congress. [For this reason, topics such as health and safety (use of a mask and hand sanitizer, for example) were highlighted.]
3. There was concern across all countries with the characterization of the regime (regardless of which regime it is: self-employed, employed, intermediate figure).
4. Concerns about the regulation of the automated decision only appeared in Brazil.
5. Concerns about <working conditions: food and meals> only appeared in Brazil.

We also noted some particularities found in each country, which are highlighted below (**Figure 03**).



*Figure 3 – Highlights by country*  
Source: Own preparation



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