
INTRODUCTION

This *Thematic Briefing* (TB) integrates a series of studies carried out by **CEPI FGV Direito SP** within the scope of the **Future of Work and Gig Economy** project. Social security was chosen as the object of analysis, as it is one of the central and most challenging issues regarding the regulatory debate around work on digital platforms, characterized by the predominance of a model without ties. In it, a set of bills that are being processed in the National Congress were analyzed, in order to identify which social security solutions are under debate and their main challenges. Enjoy your reading!

Key findings

- 1) Unlike other countries, in Brazil workers on digital platforms - regardless of their work regime - are covered by social security in the dimensions of health and social assistance, when applicable.
- 2) With regard to social security, although the self-employed are compulsory contributors, the major challenges are linked to informality and the difficulties in guaranteeing the effectiveness of contributions, due to income or lack of knowledge;
- 3) Pursuant to Decree No. 9,792/19, which regulates the National Policy on Urban Mobility (Law No. 12.587/12), application drivers must register with the General Social Security System (RGPS) as individual taxpayers, and may opt for the MEI (Individual Micro-entrepreneur);
- 4) Among 126 federal bills mapped by CEPI (Center for Education and Research on Innovation), 24 have some provision establishing a social security system for work on digital platforms, focusing on delivery and transportation services.

SOCIAL SECURITY AND WORK

From the Brazilian constitutional logic, social security can be understood as an umbrella term, which encompasses three pillars: healthcare, social security and social assistance.

Healthcare in Brazil, under the terms of article 196 of the Federal Constitution, is everyone's right, that is, anyone has universal and equal access to public health promotion, protection and recovery services, regardless of individual contribution. This right is materialized through the infrastructure of the Unified Health System (SUS).

Social assistance, organized by the Unified Social Assistance System (SUAS), is intended exclusively to meet the basic needs of specific social groups, although it does not require contributions from beneficiaries either. An example in this category is the Continuous Cash Benefit (BPC), a social assistance policy that guarantees the monthly transfer of a minimum wage to elderly people aged 65 or over and to people with disabilities of any age.

Social security, in turn, operates under a different logic, which can be understood as insurance.

In Brazil, social security has its main materialization in the General Social Security System (RGPS), organized by the National Institute of Social Security (INSS). Taxpayers under the General Regime are divided into two categories: mandatory and optional insured. People

who fall into the categories of **employee, domestic worker, individual taxpayer (professionals, self-employed, etc.), self-employed workers and special insured (rural worker) are mandatory insured people**.¹ Optional insured, on the other hand, are those who, not having their own social security regime, nor being classified as mandatory insured, join the Regime (CASTRO; LAZZARI, 2020, p. 225).

The General Regime offers certain benefits to the insured, provided that the necessary requirements for its grant are met, such as the benefit for temporary or permanent incapacity for work, accident assistance, maternity allowance, family allowance, pension for death and retirement. As a rule, the benefits are intended for all types of insured, however, there are some exceptions, such as the accident allowance (benefit resulting from the reduction in the ability to work due to an accident), which does not cover individual contributors (HORVATH JUNIOR, 2020, p. 486), classification in which many of the professionals who work on digital platforms would fit, as a large part of this contingent works as self-employed.

One of the main challenges when we think about social protection for workers in the gig economy in Brazil is to understand if and to what extent the Brazilian social security model can be applied to individuals who work in an

¹ Although they are mandatory insured, individual taxpayers (which include self-employed professionals, MEIs, self-employed people in general, etc.) are more susceptible to informality, since the contribution to the INSS is not necessarily retained on the payroll, as is the case with employed insured people. Furthermore, factors such as income or lack of knowledge can make it difficult for these workers to contribute. According to data from the Continuous PNAD (National Household Sample Survey), carried out by the IBGE (Brazilian Institute of Geography and Statistics), the Brazilian labor market registered an informality rate of 39.6% in the first quarter of 2021.

atypical manner considering traditional forms of work.

In addition, this topic deserves special attention in a conjunctural scenario of an increase in unemployment, in the order of 14.7%, according to the PNAD for the first quarter of 2021². Although, on the one hand, work on digital platforms represents an increase in the income of thousands of workers³ (AMORIM, 2021), on the other hand, it is associated with a phenomenon of expansion of informality in labor relations (RACHTER, 2019), which,

according to some authors, implies instability and reduction of labor and social protection mechanisms (VACLAVIK, 2020)⁴.

In this context, this publication seeks to address the main issues and challenges related to social security in relation to new forms of work in the interface with the gig economy. The briefing will not enter into the discussion on healthcare and social assistance, since, in Brazil, healthcare is universal and assistance is aimed at specific social groups.

METHODOLOGICAL NOTES

CEPI mapped and analyzed **126 bills (PLs) dealing with work on digital platforms**, presented between 2015 and June 18, 2021 at the National Congress, seeking to extract data and discussions around social security solutions that are being proposed to the sector. All Bills were raised from legislative research carried out on the portals of the Federal Senate

and the Chamber of Deputies, using keywords⁵ related to the theme.

Of these 126 bills, 114 were analyzed by TB2, which sought to understand the main aspects of the legislative debate around this agenda based on research that resulted in projects presented in the period from 2015 to 2020.

² As per data available at: <https://www.ibge.gov.br/estatisticas/sociais/trabalho/9171-pesquisa-nacional-por-amostra-de-domicilios-continua-mensal.html?=&t=destaques> (accessed in June/2021).

³ According to a survey carried out by Instituto Locomotiva, "with an average monthly salary of R\$ 2,154, almost double the current minimum wage, 59% of food delivery drivers say that their current income is higher than the income from the previous job". As the authors of this TB were unable to locate the report of this research, the information cited herein was taken from a news article published in Estadão on June 11, 2021. Available at: <https://mobilidade.estadao.com.br/mobilidade-para-que/maioria-ganha-mais-como-entregador-de-aplicativo-revela-pesquisa/> (accessed in June/2021).

⁴ Marcia Cristiane Vaclavik calls this phenomenon "informal entrepreneurship": "Informality is a historical mark of the Brazilian labor market and is part of the daily reality of millions of workers. The entrepreneurship of informality, in turn, is a global phenomenon that marks a reconfiguration of the informal work space, reorganizing it, amplifying it and giving it new contours. Although the intermediation of the search for work is a common mechanism in labor dynamics (Guimarães, 2008a), by massively entering the informal space, it is consistent with practices marked by weaknesses in legal support and in labor and social protection." (p. 60)

⁵ Keywords were adopted from the mapping of questions related to the subject of study. They are: (i) delivery app | "delivery app"; (ii) app workers | "app workers"; (iii) delivery drivers | "delivery drivers"; (iv) on-demand work | "on-demand work"; (v) platform work | "platform work"; (vi) freelance work | "freelance work"; (vii) odd-job economy | "odd-job economy"; (viii) crowdwork | "crowdwork"; (ix) intermittent work | "intermittent work"; (x) "uber"; (xi) "ifood"; (xii) "rappi".

The remaining 12 Bills, submitted in the first months of 2021 (i.e. outside the scope of TB2), were mapped in the ongoing monitoring process carried out by the project team. For the

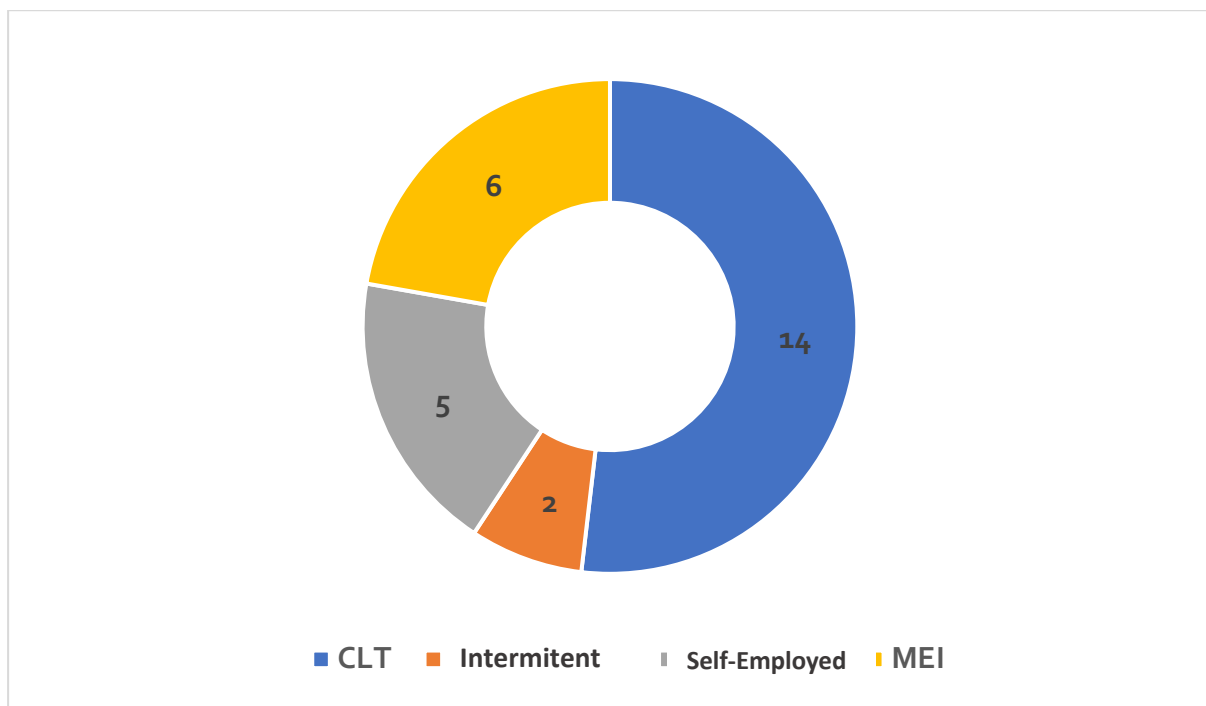
analysis below, only Bills that contained provisions dealing with the social security regime were filtered, expressly or tacitly, due to the characterization of the work regime.

BENEFITS AND SOCIAL SECURITY REGIME IN THE BRAZILIAN LEGISLATOR'S RADAR

Among the 126 bills mapped, **24 bring characterizations of legal relationship** to classify workers on digital platforms as: employed worker, intermittent worker, self-employed

worker and/or individual micro-entrepreneur (MEI)⁶.

Figure 01: Distribution of Bills by legal relationship



Source: own preparation.

⁶ Some Bills provide for the possibility of adopting more than one legal regime. In this regard, projects were identified that admit both the employed (CLT) and the MEI regime as possibilities for framing workers who work connected to digital platforms.

Next, we will analyze how each of these categories is covered by the General Social Security System, observing the differences and similarities that each of these classifications can generate.

Employed worker

The employed worker, according to article 3 of the CLT (Consolidated Labor Laws)⁷, can be defined as a natural person who provides services of a non-contingent nature to an employer, with personhood, under their subordination and for remuneration. **The employee is a compulsory insured under the General Social Security System and must contribute as an employee**, within a system of progressive rates (7.5% to 14%), based on their contribution salary (HORVATH JUNIOR, 2020, p. 691-695). Companies must pay and contribute with a rate of 20% on the total remuneration paid, due or credited, in any capacity, to the insured employees (Ibidem, p. 702).

Legal Regime	CLT
Bills (PLs)	PLP 180/2020, PL 3577/2020, PL 3748/2020, PL 3754/2020, PL 4172/2020, PL 6015/2019, PL 6423/2019, PL 5069/2019, PL 5622/2019, PL 4172/2020, PL 4097/2020, PL 5069/2019, PL 1155/2015, PL 5794/2016
Contribution to the Social Security System	Contribution as an insured employee, at rates ranging from 7.5% to 14%, depending on the employee's salary range. The employer must proportionally pay both the

	contribution to the INSS and the FGTS quota ⁸ .
Social Security Rights and Benefits	The insured employee is entitled to: - Retirement (regular or disability); - Unemployment insurance; - Sickness allowance; - Family allowance; - Maternity pay; - Accident allowance; - Death pension and imprisonment allowance for dependents.

Intermittent worker

The 2017 labor reform created the figure of the intermittent employment contract, characterized by the provision of services, with subordination, in a non-continuous manner and alternating periods of service provision and inactivity, as provided for in paragraph 3 of article 443 of the CLT (Consolidated Labor Law). **The intermittent worker is compulsory insured under the General Social Security System and must contribute as an employee** (CASTRO; LAZZARI, 2020, p. 249).

Intermittent workers must make their contribution based on a system of progressive rates (7.5% to 14%), based on their monthly contribution salary. The company must make the payment and contribute with a rate of 20% on the total remuneration paid, due or credited, in any capacity, to insured people who contribute as employed workers (HORVATH JUNIOR, 2020, p. 702).

⁷ Law that disciplines labor law in Brazil.

⁸ Acronym for "Fundo de Garantia do Tempo de Serviço". It is a fund created with the objective of protecting the worker who is fired without just cause.

However, due to the nature of the intermittent contract, it may happen that the worker, at the end of the month, earns less than the minimum wage (HORVATH JUNIOR, 2020, p. 692). In that case, the insured person is entitled to: (i) supplement the contribution to reach the minimum wage; (ii) offset against the amount of another contribution that exceeded this amount; or, also, (iii) group it with other contributions that also did not reach the minimum value (ibidem, p. 963).

Legal Regime	Intermittent
Bills (PLs)	PL 1603/2021, PL 1976/2021
Contribution to the Social Security System	Contribution as an insured employee, from 7.5% on the current minimum wage. The employer(s) must proportionally pay both the contribution to the INSS and the FGTS quota. If the amount collected does not reach the legal minimum, the contribution may be supplemented by the worker himself.
Social Security Rights and Benefits	Applied to the rights and benefits of the insured employee (refer to CLT regime).

Self-employed worker

In general, according to article 4, paragraph "c", of Law No. 3.807/60, the self-employed worker is someone who: (i) regularly performs, and on their own account, a paid professional activity; or (ii) that provides, without employment relationship, service of an occasional nature to one or more companies; or (iii) that provides paid service upon receipt, on an occasional basis, regardless of the duration of the task. **Self-employed workers are compulsory insured under the General Social**

Security System and must contribute in the form of individual contributors (CASTRO; LAZZARI, 2020, p. 271).

Individual taxpayers who provide services to individuals must make the contribution, on their own, at a rate of 20% on the respective contribution salary, and may choose a rate of 11% on the minimum wage, provided that they waive the retirement by contribution time (HORVATH JUNIOR, 2020, p. 700). If the individual taxpayer provides services to companies, said companies are responsible for collecting and contributing 20% of the total remuneration paid or credited in any capacity to the insured individual taxpayer (CASTRO; LAZZARI, 2020, P. 395).

With regard to the gig economy, this regime now applies to application drivers, due to changes in the law of guidelines of the National Policy on Urban Mobility (Law No. 12.587/12), which took place in 2018, and which introduced the "registration requirement of the driver as an individual taxpayer of the National Social Security Institute (INSS)" (cf. article 11-A, item III). With this new provision, **private remunerated rider transportation drivers are obliged to join the social security system, under penalty of characterizing illegal rider transportation.**

Decree No. 9.792/19 and Decree No. 10410/20, which regulate the Urban Mobility Law and Social Security, respectively, establish the driver's duty to carry out, on their own account, their registration and contributions to the social security system in the category of individual taxpayer, being able to opt for the Individual Micro-entrepreneur (MEI), if the driver meets the necessary requirements. In addition to the driver's obligation to prove his

or her insured status, the Decree allows digital platforms to sign a contract with the Social Security Technology and Information Company (Dataprev), in order to ensure effective inspection of the driver's membership in the social security system.

Please note that this provision only applies to private paid rider transportation drivers. In other niches of the gig economy, digital platforms do not have the obligation to inspect whether the workers who provide the services, under their intermediation, are affiliated to the RGPS (General Social Security System).

Legal Regime	Self-Employed
Bills (PLs)	PL 2163/2021, PL 4033/2020, PL 4312/2016, PL 3384/2015, PL 2632/2015.
Contribution to the Social Security System	Individual contribution of 11% (simplified regime) or 20% (full regime) on the current minimum wage. If the self-employed professional provides services to a legal entity ⁹ , it is obliged to deduct the amount of the social security fee and transfer it to the INSS.
Social Security Rights and Benefits	The individual taxpayer is entitled to: <ul style="list-style-type: none"> - Retirement (regular or disability); - Sickness allowance; - Maternity pay; - Death pension and imprisonment allowance for dependents.

Individual taxpayers are not entitled to accident and family allowances. Contribution under the simplified scheme (11%) excludes retirement due to contribution time, but retirement due to age is guaranteed.

Individual Micro-entrepreneur (MEI)

The institute of the individual Micro-entrepreneur (MEI) is understood as a “public policy that aims to formalize small businesses and social and social security inclusion” (CASTRO; LAZZARI, 2020, p. 384). MEI is an entrepreneur who cannot earn more than R\$ 81,000.00 gross income in the previous calendar year and may have a single employee hired who earns the minimum wage or the minimum wage for the category. **It is a compulsory contributor to the General Social Security System and must contribute as an individual contributor** (Ibidem, p.323).

A MEI must contribute, on his own, with his own rate of 5% on the value of a minimum wage, excluding the benefit of retirement due to contribution time. MEI can, however, supplement the contribution with another 15% to be entitled to retirement due to contribution time (CASTRO; LAZZARI, 2020, p. 386). If the MEI is hired by a company to provide plumbing, electricity, painting, masonry, carpentry or vehicle maintenance or repair services, he is obliged to pay a contribution of 20% on the total remuneration paid or credited in any capacity (ibid., p. 395).

⁹ As digital platforms operate as mere intermediaries, generally, the transfer of payment to the service provider is made through a power of attorney provided by a third party (commercial establishment and, more often, a consumer - the latter is usually an individual).

Although the entire social security system is based on a solidarity costing logic, that is, with direct and indirect contributions from workers, employers and the State, the MEI regime depends on state subsidy, which, according to Rogério Nagamine Costanzi, generates actuarial and financial imbalance for the pension system, with consequences that may be perceived in the future¹⁰. In view of this, the author warns that increased adherence to this regime may harm the long-term funding of the system, so that "any policy aimed at this group should be careful to avoid encouraging transitions of workers with formal employment to self-employment" (idem, p. 3). However, weighing up the advantages and disadvantages of adopting this system depends on a series of variables, which must be analyzed during the elaboration of public policies.

Legal Regime	Individual Micro-entrepreneur (MEI)
Bills (PLs)	PL 2163/2021, PLP 180/2020, PL 3599/2020, PL 6423/2019, PL 5069/2019, PL 3384/2015
Contribution to the Social Security System	Individual contribution from 5% of the current minimum wage. The collection is made by the MEI himself.
Social Security Rights and Benefits	<p>Established by Complementary Law No. 128/2008, the MEI is entitled to:</p> <ul style="list-style-type: none"> - Retirement (regular or disability); - Sickness allowance; - Maternity pay; - Death pension and imprisonment allowance for dependents. <p>MEI is not entitled to accident and family allowances. Contribution under the simplified scheme (5%) excludes retirement due to contribution time, but retirement due to age is guaranteed.</p>

¹⁰ "Obviously, the MEI involves a high imbalance from an actuarial and financial point of view for the RGPS. The almost symbolic contribution of only 5% of the minimum wage is certainly insufficient to guarantee, from an actuarial point of view, the financing of expenses with social security benefits that will be generated. In nominal terms, one year of payment of benefits to the MEI (13 minimum wages) would require almost 22 years of contribution (21.7 years of contribution of 60% of the minimum wage). Even capitalizing contributions or bringing the stream of contributions and benefit payments to present value, clearly the MEI is heavily subsidized and approaches a non-contributory scheme. This characteristic implies that the MEI will generate a relevant fiscal imbalance (actuarial and financial) within the scope of the RGPS (General Social Security System) in the coming decades. However, this mismatch will tend to gain visibility only when MEI beneficiaries start to receive benefits and, mainly, start to retire on a more significant scale in the future, as it is a recent program, which started to work effectively in 2009." (COSTANZI, 2018, p. 7)

BEPS in Colombia

Colombia is a country with high levels of informality in the labor market. In 2011, only 27.3% of Colombian members of the PEA (Economically Active Population) were enrolled in the national pension system. In other words, only one in three people over 65 received an old-age pension (MÍNA, 2014). Faced with the challenge of increasing its social safety net, the government created the Periodic Economic Benefits (BEPS) program in 2005, designed to "stimulate savings through additional government subsidies that increase proportionately to the contributions made by low-income workers "(idem).

With the purpose of inclusion similar to the Brazilian MEI, the BEPS is a state-subsidized pension scheme, aimed at individuals with low contribution capacity, with an income below the minimum wage. The contribution is made by the worker and/or entrepreneur.

Since 2019, some delivery platforms have ensured the contribution to the BEPS to their delivery drivers (SEMANA, 2019). As these workers do not have an employment relationship with the platforms - since there is no regulation in the country on this type of work - the collection of contributions is made through a power of attorney provided by the delivery drivers to the platforms (BERNAL, 2021)

KEY FINDINGS

Social Security Challenges: what is at stake?

- The RGPS (General Social Security System) social security system involves different hiring regimes: self-employed (including MEIs), employees, intermittent, etc. In theory, therefore, it would already include workers in the gig economy, whether they are considered to be self-employed, whether they are considered to be typical or intermittent employees, all of whom are considered compulsory contributors to the system. However, the Bills mapped point to the tendency of granting social protection through social security to gig workers, indicating that they are outside this regime. There seems to be a mismatch between the provisions of the legislation (should be) and reality, raising the question: if it is legally possible for gig workers to contribute to social security, why does this not happen? To try to answer, it is important to take into account the Brazilian context in order to put forward hypotheses: (i) lack of knowledge about the existence and importance of the contribution; (ii) low income and insufficient resources to be allocated to social security contributions; (iii) lack of knowledge about the procedures for contributing.
- Regarding the above aspect, it is also worth raising the discussion about the role of platforms: should platforms contribute (at least in part) to the welfare of gig workers? How much? Even if they have no obligation to make transfers to the INSS, should they act as facilitators or overseers of this contribution?

- RPGS also applies to those who fall into multiple legal relationships, that is, who are linked to more than one service taker or employer. However, in the gig economy, the possibility of the worker connecting to multiple platforms is very common (WOODCOK; GRAHAM, 2020), echoing debates on how to make this contribution to the regime feasible. In this regard, is it possible to think of any strategy within the RPGS or to complement it to enable the contribution given these characteristics of the gig economy?
- These and other issues deserve the attention of the Academy, sector actors and public policy makers, with a view to solutions that consider the singularities of work on digital platforms and measures that are actually effective from the point of view of social protection of workers who act on them.

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HOW TO CITE THIS TEXT

CENTER FOR EDUCATION AND RESEARCH IN INNOVATION (CEPI) OF THE SÃO PAULO LAW SCHOOL OF FUNDAÇÃO GETULIO VARGAS (FGV). *Thematic Briefing #6: Social Security and Work on Digital Platforms- version 1.0*. São Paulo: FGV Direito, October 7, 2021.