

Anette P. Hemmingby

The Classification of Workers – a Regulatory Gap?

Contents: 1. Introduction. 2. The Norwegian system of labour relations. 3. A shift in the labour market. 4. The current legal framework: employees, contractors and collective rights. 4.1 Analytical and legal framework. 4.2 Gray-zone workers. 4.3 EU and EEA Law. 4.4 International and human rights dimensions. 4.5 Implications for Norway under the EEA Agreement. 5. Classification and legal protection in Norway. 6. Platform workers and collective bargaining. 7. Is there a regulatory gap? 7.1 A response to the tension. 7.2 Interpretation of the employee concept after the presumption. 7.3 What, then, is the “gap”? 8. Recent developments in law and policy. 8.1 The presumption of employment in Norwegian law. 8.2 Comparing the presumption of employment in Norwegian law and the Platform Work Directive. 8.3 Coherence, implementation and institutional challenges. 9. Concluding reflections.

1. *Introduction*

Norwegian labour law rests on a mature institutional settlement that couples statutory protection with collective self-regulation. The Working Environment Act (WEA) supplies the protective baseline in the employment relationship, while the Labour Disputes Act (LDA) structures conflict and bargaining between organized parties¹. Co-determination is embedded in statute and practice – social dialogue and tripartite cooperation underpin wage formation and workplace participation across sectors². Historically high un-

¹ Arbeidsmiljøloven (Working Environment Act) (WEA) 17 June 2005 no. 62; Arbeidstvistloven (Labour Disputes Act) (LDA) 27 January 2012 no. 9. For state employees, the following statutes apply, respectively: Statsansatteloven (Civil Service Act) 16. June 2017 no. 67 and Tjenestetvistloven (Public Service Disputes Act) 18. July 1958 no. 2.

² Ot.prp. nr. 49 (2004–2005) p. 60, Prop. 14 L (2022–2023) p. 13.

ion density and broad collective agreement coverage have ensured that most workers are enveloped by this dual system of rights and negotiated standards³.

Over the last decade, however, the labour market has changed in ways that strain this settlement. Platform-mediated work, alongside other non-standard arrangements, has grown rapidly – particularly in urban areas – offering flexibility but also exposing workers to thinner protection and greater vulnerability⁴. Norway’s comprehensive welfare and labour legislation still provides a strong backdrop, yet workers who fall outside the traditional category of “employee” risk standing outside the protective perimeter of the WEA and, in practice, outside the main channels of representation and voice.

The classification boundary therefore becomes decisive. Under Norwegian law, the WEA applies to “employees”, not to independent contractors or solo self-employed⁵. In a series of cases, the Supreme Court has insisted that status turns on the reality of the relationship, not the label chosen in a written contract – emphasizing instruction/subordination, responsibility for results, opportunities to take on other work, and the day-to-day performance of the arrangement⁶. Platform work complicates these criteria because control and supervision may be exercised through technological and algorithmic means rather than direct personal oversight; in effect, “new wrapping” around familiar questions of dependency and subordination.

Collective bargaining presents a parallel challenge. Platform workers have traditionally been outside the scope of sectoral and company agreements, and the position of solo self-employed under competition law has been uncertain. Recent EU developments form part of the legal backdrop to this analysis and are addressed below⁷.

³ DEPARTEMENTENES SIKKERHETS- OG SERVICEORGANISASJON. TEKNISK REDAKSJON, *Lavlønn i Norge*, NOU, 2024, 11, p. 43 ff. and NERGAARD, *Organisasjonsgrader, tariffavtaledekning og arbeidskonflikter 2022*, Fafo-notat 2024:05.

⁴ OECD, *The Future of Work*, OECD Publishing, 2019.

⁵ WEA § 1-8.

⁶ Rt. 2013 s. 354 (Avlaster 1) paras. 39-42, Rt. 2013 s. 342 (Beredskapshjem) paras. 33, HR-2016-1366-A (Avlaster 2) paras. 41-43.

⁷ E.g. *Albany International BV v Stichting Bedrijfspensioenfonds Textielindustrie* (Case C-67/96), *Case FNV Kunsten Informatie en Media v Staat der Nederlanden* (Case C-413/13), the European Commission, *Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons* (2022/C 374/02), and Directive (EU) 2024/2831 on improving working conditions in platform work.

This article asks whether there is a regulatory gap at the edges of regulated working life in Norway. The concern is not merely theoretical, but relates to the possible misalignment between the personal scope of statutory labour-law protection and the reach of collective labour-law institutions. Reports and disputes in recent years reveal workers performing long hours for comparatively low income and hesitating to raise concerns for fear of losing shifts or contractual hours – symptoms of weak voice and thin protection where the system’s coordinating devices do not reach⁸. The core hypothesis is that classification practices which place platform workers outside the employee category risk excluding them from both statutory safeguards and collective bargaining coverage, producing a structural shortfall of protection and voice. In this sense, the potential regulatory gap concerns the interaction between individual and collective labour law rather than the absence of regulation as such.

A central part of today’s policy response is the presumption rule: in cases of doubt, the relationship is presumed to be *employment*⁹. This is intended to close loopholes, reinforce the priority of open-ended employment over fixed-term arrangements, and strengthen rights of employees, hired personnel and (to a degree) self-employed in areas such as representation, information/consultation and dismissal. Yet the presumption rule also raises new challenges that must be confronted. I will explore this in the following.

Methodologically, the article proceeds from Norwegian sources of law – statutes, collective agreements and case law – situated within the institutional context of social dialogue and the evolving labour market. The discussion follows the following structure: an overview of the Norwegian system; the shift in the labour market; classification and legal protection; collective bargaining and platform work; the regulatory-gap question; and recent developments in social dialogue and legislation, culminating in a set of concluding reflections. Throughout, the focus remains on Norwegian law and institutions, with European developments treated as the legal context against which national solutions must operate¹⁰.

⁸ E.g. TOSL-2024-140889 (Wolt), FELLEFORBUNDET, Streiken avsluttet: Foodora signerer tariffavtale, 27.09.2019, www.fellesforbundet.no; see also Aftenposten/NTB 27.09.2019.

⁹ WEA § 1-8. See also Prop. 14 L (2022-2023) p. 24-32.

¹⁰ Act No. 109 of Nov. 27, 1992, relating to the implementation in Norwegian law of the main part of the Agreement on the European Economic Area (EEA Act), § 1.

2. *The Norwegian system of labour relations*

The Norwegian system of labour law and industrial relations can be described as a hybrid structure in which statutory law and collective agreements interact closely. Unlike systems that rely primarily on legislative regulation, Norway maintains a model in which collective bargaining and social dialogue are indispensable complements to statutory rights. The WEA functions as the backbone of individual labour rights, establishing rules for health and safety, information and consultation, as well as dismissal protection¹¹. It does not, however, operate in isolation. Collective agreements fill normative gaps by regulating pay, working time, pensions, and dispute resolution at both the sectoral and enterprise level. Access to these collective frameworks is, however, contingent on legal status: the institutional rights attached to collective bargaining presuppose that workers fall within the scope of labour law as employees¹². This linkage between classification and collective voice is a defining feature of the Norwegian model and becomes particularly salient in the context of non-standard and platform-mediated work.

A defining feature of the system is the institutionalized role of the social partners. Employers' organizations and trade unions not only negotiate agreements but also shape national labour market policy in tripartite cooperation with the state. This tripartism is visible in the annual wage settlements, in which macroeconomic considerations, competitiveness, and fairness are balanced¹³. The Norwegian model thus depends heavily on high union density and broad collective agreement coverage. When coverage decreases or when groups of workers are excluded from unions, the system's integrative function could be weakened.

From a legal perspective, the Norwegian system is characterized by an intricate balance between mandatory statutory provisions and the freedom of contract exercised collectively. The WEA contains provisions that are mandatory and protective, reflecting the principle that labour law exists to protect the weaker party in an inherently asymmetrical relationship. Yet the system also allows for adaptation through collective bargaining, which

¹¹ WEA §§ 1-1, 14-9, 15-7.

¹² LDA §§ 3 and 4.

¹³ More about this in e.g. HEMMINGBY, *L'implication de l'État et la négociation collective dans le droit du travail norvégien: Une analyse critique*, in *SSLam*, 2025.

has historically produced detailed frameworks tailored to specific industries. This combination is often presented as the essence of the Nordic labour market model¹⁴. However, it also presupposes a stable and predominantly standard employment relationship. As the number of non-standard workers increases, including those in platform-mediated work, the tension between statutory coverage and collective adaptation becomes more apparent¹⁵.

3. *A shift in the labour market*

The Norwegian labour market has undergone a series of structural shifts driven by digitalization, globalization, and the growing prevalence of non-standard and precarious work. Traditional employment relations, once the dominant and assumed model, are increasingly supplemented – and in some sectors, displaced – by more fragmented and flexible arrangements. Among these, platform work has attracted particular attention. Food delivery companies, ride-hailing apps, and online labour platforms mediate the supply of work through digital interfaces, algorithmic matching, and ratings systems. This form of organization disrupts established categories: it promises autonomy to workers, but often subjects them to unprecedented forms of algorithmic surveillance and dependency¹⁶.

From a legal perspective, these developments expose the limitations of a binary classification system designed for an analogue economy. Contracts typically define platform workers as independent contractors, stressing their freedom to choose when to work and for whom. In practice, however, the platforms may exercise extensive control through technological means. Algorithms can determine access to shifts, monitor performance via GPS, and rank workers based on ratings that condition their ability to secure future work. The relationship is thus marked by dependency and asymmetry, features traditionally associated with the employment contract. Yet, by presenting the relationship as self-employment, platforms displace the risks

¹⁴ Ibid. See also STOKKE, NERGAARD, EVJU, *Det kollektive arbeidslivet*, Universitetsforlaget, 2013, 2nd ed., pp. 231–236.

¹⁵ Prop. 14 L (2022–2023) noting the challenges of extending protections to non-standard workers and the presumption of employment, see especially pp. 19–20.

¹⁶ EUROPEAN COMMISSION, *Report on Digital Labour Platforms*, 2021, which analyses the growth of platform work and its reliance on algorithmic management systems.

of fluctuating demand onto workers, excluding them from various statutory and collective protections¹⁷.

The vulnerabilities of platform workers are both economic and institutional. Economically, these workers often face irregular and unpredictable income, no entitlement to sick pay, and no protection against dismissal. Institutionally, their exclusion from collective agreements undermines the integrative capacity of the Norwegian model. The Foodora strike of 2019 demonstrated the stakes: riders designated as employees successfully organized, undertook industrial action, and secured a collective agreement. Their victory underscored the difference legal status makes. Had they been classified as self-employed, their right to strike and bargain collectively would have been questionable under EU competition law¹⁸. This illustrates that classification in platform work has implications not only for access to statutory labour-law protection, but also for the permissibility and institutional framing of collective bargaining, thereby situating national labour law within the broader framework of EU and EEA competition and labour law.

These shifts raise pressing regulatory questions. Should Norwegian law adapt by stretching the concept of “employee” to encompass platform workers, or should it follow the route of introducing intermediate categories? Alternatively, should collective bargaining rights be extended irrespective of formal status, thereby decoupling protection from classification? Each option carries doctrinal and political risks but doing nothing would leave an expanding segment of the labour force unprotected. The inclusiveness of the Norwegian model, and its political legitimacy, ultimately depend on preventing large-scale exclusion at the margins of working life¹⁹.

¹⁷ Directive (EU) 2024/2831 introduces obligations on algorithmic transparency and human oversight, reflecting concern over digital control substituting for managerial authority (chapter 3).

¹⁸ Coverage of the Foodora strike, Norway 2019, including union communications and media reports documenting riders’ successful collective action and resulting collective agreement. See above, note 8.

¹⁹ Prop. 14 L (2022–2023), which frames the presumption of employment as necessary to address systemic exclusion of non-standard workers.

4. *The current legal framework: employees, contractors and collective rights*

4.1. *Analytical and legal framework*

This section sets out the European and international legal framework relevant to the analysis of classification and collective rights in Norwegian labour law. The purpose is not to replace the national assessment, but to identify the external legal constraints and reference points that inform the interpretation of collective bargaining rights for workers who fall outside, or at the margins of, the traditional employee concept.

In particular, European competition law, EU labour-law developments and international human-rights instruments define the legal space within which collective agreements for dependent or borderline workers may be concluded. This framework is therefore relevant for understanding the conditions under which collective representation and bargaining may be extended beyond standard employment relationships in Norway.

4.2. *Gray-zone workers*

Understanding the existing legal framework is essential for analyzing the position of those who risk falling into a *regulatory gap* – workers whose economic dependency or contractual form leaves them at the margins of labour-law protection. Before assessing the extent of that gap, it is necessary to clarify how Norwegian and European law define the status and collective rights of employees, independent contractors and those often described as *grey-zone workers*.

The term *grey-zone workers* refers to individuals who are formally self-employed but economically dependent on, or subordinated to, a single client or intermediary. The expression, used in European and international policy literature, denotes the “grey area between genuine self-employment and employment”²⁰. It encompasses both those who are formally self-employed but in fact working under another’s direction and control – the category identified in EU case law as *false self-employed* – and

²⁰ *FNV Kunsten Informatie en Media v Staat der Nederlanden* (Case C-413/13). See also HOTVEDT, *Kollektive forhandling for oppdragstakere? Rekkevidden av adgangen til å forhandle tariffavtaler i lys av internasjonal rettsutvikling*, in *Arbeidsrett*, 2020, 1, pp. 1–44.

those who are economically dependent self-employed, whose independence is largely nominal. In practical and legal terms, these workers occupy the space in which questions of classification, protection and collective rights converge.

Norwegian labour law is built on a binary distinction between *employees* and *independent contractors*. The WEA applies only to employees, as defined functionally²¹. Independent contractors fall outside its personal scope and are primarily governed by general contract law, though sectoral statutes may provide specific protection. The distinction depends on the factual reality of control and subordination rather than on contractual form.

Independent contractors are not prohibited from organizing or joining trade unions. They may also negotiate and enter into collective agreements regulating aspects of their work. However, they are not covered by *tariff agreements (tariffavtaler)* within the meaning of the Labour Disputes Act (LDA)²². According to the LDA, a tariff agreement presupposes that at least one party represents employees²³. Collective arrangements covering contractors are therefore valid as ordinary civil contracts but do not have the normative or institutional effects of tariff agreements – such as binding dispute-resolution procedures, peace obligations, or extended applicability through the General Application Act²⁴.

In practice, several Norwegian unions represent contractors and *solo self-employed* workers – those who operate without employees and rely economically on one or few clients. Organizations such as the Norwegian Union of Journalists and Creo²⁵ have concluded framework agreements that set minimum standards for freelancers²⁶. These are legitimate and enforceable under contract law but remain outside the statutory regime of collective labour law.

²¹ WEA § 1–8.

²² See note 1.

²³ LDA § 1 e.

²⁴ Act of 4 June 1993 No. 58 relating to general application of collective agreements, etc. (The General Application Act).

²⁵ Creo is a trade union representing workers in the art sector in Norway.

²⁶ ARBEIDSLIVET, *Selvstendig næringsdrivende og oppdragstakere*, 2024, www.arbeidslivet.no.

4.3. *EU and EEA Law*

Under EU law, collective bargaining by self-employed persons has traditionally raised questions under Article 101 TFEU, which prohibits agreements that restrict competition. In *Albany* (C-67/96), the Court of Justice held that collective agreements between employers and employees fall outside Article 101 because they pursue social, not economic, objectives²⁷. In *FNV Kunsten* (C-413/13), the Court extended this principle to *false self-employed* persons whose situation is comparable to that of employees – effectively describing part of the *grey zone* between employment and self-employment²⁸.

Building on this jurisprudence, the European Commission adopted Guidelines on collective agreements for solo self-employed persons in 2022²⁹. The Guidelines clarify that collective bargaining is compatible with competition law where self-employed persons are economically dependent, work side by side with employees, or are in comparable positions of subordination. The Commission further stated that such agreements will not be an enforcement priority even where the boundaries of the *Albany* exemption remain open.

The Platform Work Directive (Directive (EU) 2024/2831) continues this evolution³⁰. It introduces a rebuttable presumption of employment and rules on algorithmic management, emphasizing that digital control and economic dependency may reveal an employment relationship irrespective of contractual form. Read together with the 2022 Guidelines, the Directive reflects a broader European recognition that *grey-zone workers* require functional rather than formal inclusion in systems of protection and representation.

4.4. *International and human rights dimensions*

International labour standards frame collective rights beyond a strict employee/contractor divide. Freedom of association and the right to bargain

²⁷ *Albany International BV v Stichting Bedrijfspensioenfonds Textielindustrie* (Case C-67/96), paras. 59–64.

²⁸ *FNV Kunsten Informatie en Media v Staat der Nederlanden* (Case C-413/13), paras. 32–36.

²⁹ The European Commission, *Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons* (2022/C 374/02).

³⁰ Directive (EU) 2024/2831 of the European Parliament and of the Council on improving working conditions in platform work.

collectively are recognized as general worker rights under ILO Conventions Nos. 87 and 98 and under Articles 5 and 6 of the European Social Charter³¹. These instruments have been central to discussions concerning workers in the *grey zone* between employees and independent entrepreneurs.

The *ICTU v. Ireland* case illustrates this development. Following a complaint by the Irish Congress of Trade Unions to the ILO Committee on Freedom of Association concerning restrictions on collective bargaining for self-employed workers such as freelance journalists, the Committee found that excluding such workers from bargaining rights was incompatible with Convention No. 98³². The Committee recommended legal reform, and Ireland subsequently amended its competition legislation through the *Competition (Amendment) Act 2017*, allowing collective bargaining for defined categories of dependent self-employed workers³³. The case established in international labour practice that certain self-employed persons occupy a *grey zone* in which collective rights must be recognized.

This position corresponds with European law following *FNV Kunsten* and the Commission's 2022 Guidelines, which similarly identify "solo self-employed" in dependent positions as entitled to collective negotiation on working conditions³⁴. The same reasoning has been reflected in decisions of the European Committee of Social Rights, which has emphasized that the right to bargain collectively cannot depend solely on formal employment status³⁵.

From a policy perspective, international organizations have reached comparable conclusions. The OECD has highlighted the need for more inclusive forms of social dialogue to ensure that non-standard and platform-based workers are not left institutionally unrepresented³⁶. Together, these instruments and experiences form part of the legal and policy background against which Norwegian labour law must now be interpreted.

³¹ ILO Convention No. 87 (1948); Convention No. 98 (1949); Council of Europe, European Social Charter (Revised) (1996), arts. 5–6.

³² The European Committee of Social Rights (ECSR) case *ICTU v. Ireland* No. 123/2016.

³³ Ireland, *Competition (Amendment) Act 2017* (No. 12 of 2017).

³⁴ The European Commission, *Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons* (2022/C 374/02) pts. 27–33.

³⁵ European Committee of Social Rights, Conclusions XXI-3 (2018)

³⁶ OECD, *Employment Outlook 2019*, 2019, pp. 189–190.

4.5. Implications for Norway under the EEA Agreement

As an EEA state, Norway is obliged to ensure that national rules are consistent with the EEA's competition-law and labour-market framework. The 2022 Guidelines are considered *EEA-relevant soft law* and guide both the EFTA Surveillance Authority (ESA) and national enforcement bodies. This means that collective agreements for economically dependent contractors are unlikely to be treated as anti-competitive, provided that they concern working conditions and not market prices.

Nevertheless, Norwegian statutory law still reflects a strict binary division. The WEA protects employees; the LDA governs collective relations for employees; and no specific legal category covers dependent contractors. The structure leaves limited space for the collective regulation of dependent self-employment within the existing system, even as European and international developments increasingly legitimize such arrangements³⁷. Enforcement and practical implementation in Norway also depend less on formal legal barriers than on the institutional willingness of trade unions and employer organizations to include these groups³⁸.

Recent European debate further supports this interpretation. The European Commission's pragmatic enforcement approach has effectively opened a space for collective bargaining by *solo self-employed* persons³⁹. This approach enables national systems to accommodate dependent self-employed within collective structures without formal amendment of competition law.

In summary, Norwegian law allows organization and collective negotiation for independent contractors, but only employees enjoy the institutional rights attached to tariff agreements. EU, EEA and international developments have expanded the permissible scope for collective bargaining by dependent self-employed persons, signaling a gradual convergence between individual and collective protection. The interaction between these frameworks – national, European and international – defines the legal context within which Norwegian labour law must now evolve. Against this backdrop, the legal status of platform workers becomes a critical test case: it

³⁷ HOTVEDT, *cit.*, pp. 1–44.

³⁸ JESSNES, *Kollektiv organisering av selvstendige og oppdragstakere*, Fafo-rapport, 2022, 07.

³⁹ HIESSL, "Enforcement Priorities" as an Escape Route from EU Competition Law?, in JORENS (ed.), *The Lighthouse Function of Social Law*, Springer, 2023, pp. 123–141.

is here that questions of classification, collective bargaining rights and the interface between labour law and competition law intersect may arise most visibly in practice.

5. *Classification and legal protection in Norway*

At the heart of Norwegian labour law lies the distinction between employee and independent contractor. This binary determines access to the Working Environment Act (WEA) and its protections. Employees are entitled to rights such as dismissal protection (§ 15-7) and restrictions on temporary employment (§ 14-9). Independent contractors are excluded because they are not *employees*. The stakes of classification are therefore immense: the boundary line between employee and contractor functions as the gateway to the entire protective regime⁴⁰. While the employee concept is not defined by an explicit reference to the protective purpose in statutory language, Norwegian case law has consistently interpreted the concept in light of the Working Environment Act's social and protective function⁴¹.

Norwegian case law applies a functional test, not a formalistic one. The Supreme Court has repeatedly stressed that the actual performance of the relationship matters more than the contractual label. In Rt. 2013 s. 354 *Avlaster 1* and Rt. 2013 s. 342 *Beredskapshjem*, the Court underscored that the decisive criteria are subordination, employer control, integration into the organization, responsibility for results, and the worker's ability to perform services for others. In HR-2016-1366-A *Avlaster 2*, the Court highlighted the continuous flow of instructions and the worker's integration into daily operations as indicators of employment. This jurisprudence reflects an insistence on substance over form⁴².

Nevertheless, the functional approach is not without limits. It was developed in the context of analogue work relations characterized by visible

⁴⁰ WEA e.g. setting out purpose, rules on temporary employment, and dismissal protection.

⁴¹ See, inter alia, Rt. 2013 s. 354 (*Avlaster I*), Rt. 2013 s. 342 (*Beredskapshjem*), and HR-2016-1366-A (*Avlaster 2*). See further HOTVEDT, *Kollektive forhandlinger*, cit., when it comes to the purposive interpretation of the employee concept in Norwegian labour law.

⁴² Rt. 2013 s. 354 (*Avlaster 1*), Rt. 2013 s. 342 (*Beredskapshjem*) and HR-2016-1366-A (*Avlaster 2*), emphasizing substance over form in classification disputes.

managerial hierarchies. Platform work challenges these criteria. Control is exercised less through direct human supervision and more through algorithmic management. Workers may appear autonomous – choosing when to log on and accept tasks – yet their autonomy is structured and constrained by digital systems that allocate shifts, track performance, and determine access to future work. The law must therefore grapple with whether algorithmic management should count as “control” for classification purposes⁴³.

The problem is compounded by the economic logic of platforms. Platforms often insist that workers are entrepreneurs running their own business, bearing the risks of fluctuating demand. Yet in practice, many platform workers depend overwhelmingly on a single platform for income, lack bargaining power, and cannot meaningfully set prices or conditions. This economic dependency undermines the entrepreneurial narrative and has prompted debates about “economically dependent self-employment” as a descriptive category⁴⁴. Although Norwegian law has not yet recognized this intermediate category, debates around its possible introduction highlight the inadequacy of a rigid binary.

In sum, the Norwegian classification system illustrates the law’s difficulty in mapping traditional categories onto new realities. On one hand, the Supreme Court’s functional approach allows flexibility, ensuring that labels cannot easily disguise subordination. On the other, it lacks a framework for addressing technologically mediated control and economic dependency.

The introduction of a presumption of employment in § 1-8 of the WEA represents a legislative response to concerns about under-inclusion in borderline cases. The provision does not redefine the employee concept, nor does it explicitly codify the Act’s protective purpose in statutory language. Rather, it establishes a procedural presumption that places the burden of proof on the party asserting that an employment relationship does not exist.

According to the preparatory works, the presumption is intended to reinforce a functional and purposive assessment of the relationship, in which established criteria such as control, subordination, integration and allocation of economic risk remain decisive⁴⁵. Where these indicators point in different directions, the presumption clarifies the point of departure for the

⁴³ Directive (EU) 2024/2831, chapter 3, addresses algorithmic management, reflecting recognition that digital control mechanisms may replicate subordination.

⁴⁴ HOTVEDT, *Kollektive forhandlinger*, cit.

⁴⁵ See Prop. 14 L (2022-2023).

assessment without displacing the holistic evaluation developed in Supreme Court case law⁴⁶.

6. *Platform workers and collective bargaining*

This section applies the legal framework outlined above to the specific context of platform-mediated work. The focus is not on re-assessing the general scope of collective labour law, but on examining how questions of classification and collective bargaining arise in practice where workers are formally self-employed but perform work under conditions of economic dependency.

Collective bargaining has long been a cornerstone of the Norwegian labour market model, ensuring that wages, working conditions, and conflict resolution are not left solely to managerial discretion or statutory minimums. However, the arrival of platform work has destabilized the assumption that bargaining is reserved for employees in the traditional sense. Workers who are formally self-employed but functionally dependent on a single platform occupy a legal grey zone. The key issue is whether these workers should be entitled to join trade unions and bargain collectively without running afoul of competition law⁴⁷.

While EU competition law treats self-employed persons as undertakings for the purposes of Article 101 TFEU, subsequent case law and Commission guidance clarify that collective agreements aimed at improving working conditions for solo self-employed persons in positions of economic dependency fall outside the scope of the prohibition⁴⁸. This doctrinal fram-

⁴⁶ See also Rt. 2013 p. 354 (Avlaster I), Rt. 2013 p. 342 (Beredskapshjem), and HR-2016-1366-A (Avlaster 2), confirming a holistic and functional assessment based on the reality of the relationship.

⁴⁷ See generally the LDA, which define the legal basis of collective bargaining in Norway, cf. note 1 above.

⁴⁸ See *FNV Kunsten Informatie en Media* (Case C-413/13), paras. 31–42, where the Court held that collective agreements covering so-called “false self-employed” persons fall outside Article 101 TFEU. See further European Commission, *Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons* (2022/C 374/02), clarifying that collective agreements aimed at improving working conditions for economically dependent solo self-employed persons do not constitute an enforcement priority and, in defined situations, fall outside Article 101 TFEU.

ing risks excluding solo self-employed workers from collective bargaining. Yet – as mentioned above – the Court of Justice of the European Union (CJEU) in *FNV Kunsten* (Case C-413/13) recognized that so-called “false self-employed” – those in a position comparable to employees – should be allowed to bargain collectively. The Court emphasized that where a contractual designation of self-employment conceals a relationship of dependency and subordination, the logic of competition law must yield to the imperatives of social protection⁴⁹.

Building on this jurisprudence, the European Commission in 2022 adopted the Guidelines clarifying that collective agreements covering solo self-employed persons who lack real bargaining power are compatible with Article 101. The Guidelines make clear that such agreements are presumed lawful when they aim to improve working conditions rather than restrict competition. This development significantly widens the space for unions to represent platform workers, even when platforms insist on their self-employed status⁵⁰.

The *Foodora dispute* in Norway illustrated these tensions in practice. Riders engaged in strike action in 2019, demanding not only higher wages but also predictability of schedules and access to insurance. Their campaign attracted public attention and culminated in Foodora signing a collective agreement with the Norwegian Transport Workers’ Union. The agreement was acknowledged as the first of its kind for platform workers in Norway. Crucially, the case underscored how collective action can succeed even in fragmented workforces and demonstrated the role of legal classification: had the riders been designated as self-employed, their bargaining rights would have been far less clear⁵¹.

These developments point towards a recalibration of the relationship between labour law and competition law. Where once competition law operated as a barrier to collective bargaining for the self-employed, EU jurisprudence and Commission guidance now carve out spaces where bargaining is not only permissible but clearly compatible with competition

⁴⁹ *FNV Kunsten Informatie en Media v Staat der Nederlanden*, (Case C 413/13) where the CJEU recognized that “false self-employed” may bargain collectively.

⁵⁰ The European Commission, *Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons* (2022/C 374/02).

⁵¹ Coverage of the Foodora strike, Norway, 2019; see media reports and union documents describing the negotiation and eventual agreement.

law when confined to working conditions. For Norway, an EEA member, these changes are legally and politically significant. They suggest that the boundary of collective bargaining rights can be redrawn to include platform workers without undermining the competitive order of the internal market. The developments illustrate that the significance of classification extends beyond access to statutory protection and into the collective domain, reinforcing the question of whether existing legal categories adequately capture the realities of platform-mediated work.

7. *Is there a regulatory gap?*

7.1. *A response to the tension*

When I raise the question of whether Norwegian labour law leaves a “regulatory gap” at the margins of working life – i.e., a space in which workers who in practice exhibit dependency and subordination are not fully captured by the protective regime of the WEA or by collective agreements, my point is not that independent contractors lack all legal protection. The term “regulatory gap” is used here in a structural rather than a literal sense, referring to the reach and coherence of existing legal frameworks rather than to the absence of regulation as such. It is that they may stand outside the particular labour-law structures that have historically secured protection and voice: the statutory standards of the WEA and the collectively negotiated frameworks that organize terms and participation in Norwegian working life.

The WEA applies – by design – only to “employees” within a functional definition. Independent contractors fall outside that personal scope and therefore do not benefit from, inter alia, limits on temporary employment and protection against unfair dismissal⁵². Norwegian case law has long insisted that status is determined by substance rather than contractual labels. The Supreme Court’s *Avlaster 1*, *Beredskapshjem* and *Avlaster 2* decisions are standard points of reference for a holistic, fact-sensitive test⁵³. What chal-

⁵² WEA § 1-8; §§ 14-9, 15-7.

⁵³ Rt. 2013 s. 354 (*Avlaster 1*), paras. 39-42, Rt. 2013 s. 342 (*Beredskapshjem*), para. 33 and HR-2016-1366-A (*Avlaster 2*), paras. 41-43.

lenges the application of that test today is less its logic than its context: in platform-type arrangements, control and direction are exercised through digital infrastructures – task allocation, data-driven monitoring, ranking – rather than through visible hierarchical supervision.

Recent reforms respond to that tension. The Platform Directive introduces a rebuttable presumption of employment where indicators of control and direction are present and imposes transparency and human-oversight duties for algorithmic management⁵⁴. Domestically, in 2023 § 1–8 WEA was amended to introduce a presumption of employment in doubtful cases, placing the burden of proof on the putative employer⁵⁵. The reform's declared purpose was to prevent borderline arrangements from slipping outside the Act's personal scope and to reaffirm open-ended employment as the normative form.

7.2. Interpretation of the employee concept after the presumption

The 2023 amendment does not rewrite the employee concept. It clarifies *how* the concept is to be applied. The preparatory works state that the well-known holistic assessment remains decisive, but that it must now be carried out expressly in light of the protective purpose of the WEA. Where indicators pull in different directions, that purpose shall weigh heavily⁵⁶. In other words, the presumption codifies a purposive approach that was already implicit in doctrine and case law: classification is a normative exercise directed by the Act's social function of safeguarding those who, in reality, work under another's control⁵⁷.

Hotvedt emphasizes this point. She argues that the presumption primarily strengthens the interpretative point of departure: dependency, subordination and integration are still the core indicators, but they are to be read through the lens of the WEA's protective and social aim⁵⁸. She further

⁵⁴ Directive (EU) 2024/2831 of the European Parliament and of the Council on improving working conditions in platform work, art. 4 (presumption), arts. 6–8 (algorithmic management).

⁵⁵ WEA § 1–8. See also Prop. 14 L (2022–2023) pp. 24–32.

⁵⁶ Rt. 2015 s. 475 paras. 65, Rt. 2013 s. 354 (Avlaster 1) paras. 39. See also HOTVEDT, *Kollektive forhandlinger*, cit.

⁵⁷ Rt. 2013 s. 354 (Avlaster 1), paras. 39–42.

⁵⁸ HOTVEDT, *Arbeidstakerpresumsjonen under lupen*, in *Arbeidsrett* 2025, pp. 1–35. See also SØNDERLAND SKJØNBERG, *Legal presumptions in Labour Law*, in *NJLL*, 2025, pp. 1–18.

contends that the amendment requires courts to articulate more clearly how that aim affects the weighting of the indicators in borderline cases – thus positioning the presumption as an interpretative tool rather than a freestanding rule of proof⁵⁹.

A systemic challenge follows from the amendment's limited reach. The presumption was added to the WEA only; no corresponding provision exists in the Labour Disputes Act (LDA). That asymmetry raises the risk – at least in theory – of divergent applications of “employee” across individual and collective domains: a worker might be presumed an employee when claiming WEA rights, yet face a more open-textured, case-based approach in disputes about the reach of a collective agreement. Norwegian scholars caution against such fragmentation and argue for a consistent, purposive understanding across the two pillars of Norwegian labour law⁶⁰. This asymmetry does not create a contradiction in law, but it does raise questions about the practical alignment of individual and collective labour law in borderline cases.

Addressing the gap ultimately raises a strategic question about the direction of reform. One possibility is to revisit the scope of the employee concept itself – either by broadening the functional test or by introducing an intermediate category of “worker.” One solution is to include as employees *economically dependent self-employed persons*, individuals who formally operate independent businesses but in reality depend on a single client for income. Extending the employee concept to such relationships could reduce under-inclusion but might also blur the boundary between genuine entrepreneurship and dependent work, creating uncertainty in the law.

An alternative strategy is to maintain the existing definition of “employee” while extending certain collective rights irrespective of status. The Court of Justice in *FNV Kunsten* recognized that “false self-employed” may lawfully engage in collective bargaining, and the European Commission's 2022 Guidelines confirm that agreements improving the conditions of solo self-employed workers in positions of dependency fall outside the prohibition in Article 101 TFEU⁶¹. Such an approach would preserve the autonomy

⁵⁹ HOTVEDT, *Kollektive forhandlinger*, cit.

⁶⁰ See e.g. HOTVEDT, *Kollektive forhandlinger*, cit.

⁶¹ *FNV Kunsten Informatie en Media v Staat der Nederlanden* (Case C-413/13) paras 32–36 and the European Commission, *Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons* (2022/C 374/02).

of genuinely independent contractors while enabling those in borderline positions to participate in collective regulation.

Neither path is without risk. Redefining “employee” could stretch the concept to the point where its analytical clarity and institutional function are weakened. Extending collective bargaining rights beyond employees requires careful calibration with competition law and with the structure of Norwegian collective institutions. Still, the present situation – in which a segment of the workforce remains outside both statutory protection and collective coverage – appears increasingly difficult to sustain. The regulatory gap, in this sense, is not merely technical but systemic: it touches both individual fairness and the coherence of the Norwegian model itself.

7.3. *What, then, is the “gap”?*

On this reading, the “gap” is not a doctrinal void but one of reach and coherence. When workers in platform-type settings are treated as independent contractors, they may be partially integrated into the protective system: the presumption narrows under-inclusion on the individual side of the WEA, but the collective side – coverage by collective agreements and the practical channels of voice – remains less certain so long as the LDA lacks a parallel interpretative directive. That uncertainty matters in a model built on interaction between statutory protection and collective regulation.

From an analytical perspective, two principal pathways can be identified. One is to adjust the *application* of the employee concept – via purposive interpretation under § 1-8 – so that dependent contractors are captured where the substance of the relationship warrants it. A second is to strengthen collective voice regardless of formal status, in line with EU developments: *FNV Kunsten* recognizes collective bargaining for “false self-employed”, and the Commission’s 2022 Guidelines demarcate when agreements for solo self-employed in positions of dependency fall outside Article 101 TFEU⁶². Neither approach demands categorical re-definition; both are compatible with a purposive method that preserves real self-employment while securing protection where dependency is demonstrated.

⁶² *FNV Kunsten Informatie en Media v Staat der Nederlanden*, (Case C-413/13), paras. 32-36; the European Commission, *Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons* (2022/C 374/02) pts. 27-33.

The practical implication is straightforward. If the presumption's purposive logic guides *both* WEA status questions and the interpretation of collective coverage, the "regulatory gap" narrows without redesigning the system. If interpretations diverge across the two statutes, the gap may persist as a structural fissure – less about the presence of rules than about their alignment. Chapter 8 considers how recent legislation and EU measures position Norwegian law with respect to that alignment.

8 *Recent developments in law and policy*

8.1. *The presumption of employment in Norwegian law*

The legislative and policy developments of recent years demonstrate that the question of classification and protection is now a central concern both in Norway and at the European level. The presumption of employment introduced into § 1-8 of the WEA marks a significant step in clarifying the point of departure for assessing employment status. The amendment establishes a rebuttable presumption of employment in cases of doubt and reallocates the burden of proof. According to the preparatory works, the purpose of the provision is to reduce the risk of under-inclusion, while the substantive criteria for employee status remain those developed in Norwegian Supreme Court case law⁶³. This confirms a purposive reading that has been developing in Norwegian law for decades⁶⁴.

8.2. *Comparing the presumption of employment in Norwegian law and the Platform Work Directive*

The presumption of employment introduced in WEA § 1-8 and the rebuttable presumption established in the Platform Work Directive pursue related objectives, but they differ in scope and regulatory technique. Both respond to concerns about under-inclusion in borderline cases and seek to

⁶³ See Prop. 14 L (2022–2023) (Amendments to the Working Environment Act: clarification of the employee concept and presumption of employment), emphasizing that the presumption reallocates the burden of proof in cases of doubt without altering the substantive assessment of employee status; cf. Working Environment Act § 1-8.

⁶⁴ See e.g. SØNDERLAND SKJØNBERG, *cit.*

ensure that contractual form does not obscure the substantive reality of the working relationship⁶⁵.

Under Norwegian law, the presumption in § 1-8 operates as a general evidentiary rule across sectors. It reallocates the burden of proof in cases of doubt, while leaving the substantive employee concept to be determined through the holistic, fact-sensitive assessment developed in Supreme Court case law. The relevant indicators therefore remain those traditionally associated with control, subordination, integration and the allocation of economic risk, evaluated in light of the protective function of labour law as expressed in legal doctrine and preparatory works⁶⁶.

The presumption in the Platform Work Directive is more targeted in material scope, as it is designed specifically for platform-mediated work. The Directive combines a rebuttable presumption of employment with a more detailed regulatory response to digital forms of control, including rules on algorithmic management, transparency and human oversight of significant decisions affecting working conditions. In this sense, the Directive articulates a denser framework for assessing direction and control within a confined field, whereas the Norwegian presumption may be said to go further in terms of general applicability⁶⁷.

The relationship between the two presumptions is therefore probably best described as functional alignment rather than identity. Both reflect a purposive approach in which the assessment of employee status is anchored in the realities of dependency and control, including technologically mediated forms. At the same time, the Directive's sector-specific design and its procedural obligations relating to algorithmic management add layers of regulation that Norwegian law addresses primarily through general principles and institutions.

⁶⁵ Working Environment Act § 1-8; Prop. 14 L (2022-2023). Directive (EU) 2024/2831 on improving working conditions in platform work (Platform Work Directive), introducing a rebuttable presumption of employment for platform work.

⁶⁶ Rt. 2013 p. 354 (Avlaster I); Rt. 2013 p. 342 (Beredskapshjem); HR-2016-1366-A (Avlaster 2); see also Prop. 14 L (2022-2023).

⁶⁷ Directive (EU) 2024/2831 (Platform Work Directive), including its provisions on algorithmic management, transparency and human oversight of automated decision-making affecting working conditions.

8.3. *Coherence, implementation and institutional challenges*

While the reform strengthens individual protection, it also raises new questions about coherence and implementation. The absence of a corresponding presumption in the LDA means that the relationship between the two statutes is not fully synchronized. Courts and practitioners must therefore determine whether the purposive interpretation codified in § 1-8 of the WEA should also inform the interpretation of the LDA. From a systemic point of view, this is crucial: as Skjønberg observes, the legitimacy of the Norwegian model depends on the functional unity of individual and collective labour law⁶⁸. A dual system in which “employee” is read differently in the two domains would risk eroding that coherence.

Another challenge concerns enforcement. The presumption shifts the burden of proof, but it presupposes institutional capacity to make the presumption effective. The Labour Inspection Authority, the courts and the social partners will need both resources and interpretative guidance to apply the new rule consistently. Hotvedt argues that the 2023 amendment, by clarifying the evidentiary presumption, inevitably requires courts to make explicit how protective considerations inform their legal assessment of employment status⁶⁹. Without such doctrinal transparency, the presumption risks operating merely as a rhetorical signal rather than as a substantive interpretative directive.

The European context adds further layers to this development. The Platform Directive introduces a parallel presumption of employment and procedural rules on algorithmic management⁷⁰. Platforms are required to provide information about automated decision-making and to ensure human oversight of significant managerial functions. The Directive’s recitals clarify that digitally mediated and algorithmic management techniques are relevant to the assessment of direction and control in the classification of employment relationships⁷¹.

⁶⁸ SKJØNBERG, *Tariffavtalen og dens sentrale rettsvirkninger*, in *JV*, 2019, 54, pp. 277–334, see especially pp. 278–279. See also NOU 2021: 9, *Den norske modellen og fremtidens arbeidsliv*.

⁶⁹ HOTVEDT, *Arbeidstakerpresumsjonen under lupen*, cit., on p. 35.

⁷⁰ Directive (EU) 2024/2831 of the European Parliament and of the Council on improving working conditions in platform work.

⁷¹ *Ibid.*, recitals concerning algorithmic management, control and the assessment of employment status.

In addition to the rebuttable presumption of employment, the Platform Work Directive introduces procedural obligations aimed at increasing transparency and accountability in algorithmic management. Platforms are required to provide information about automated decision-making and to ensure human oversight of decisions that significantly affect working conditions. In this context, the Directive's recitals clarify that digitally mediated management techniques may be relevant when assessing "direction and control" for the purposes of employment classification⁷².

For Norway, incorporation of the Directive through the EEA Agreement would require careful coordination with national law. At the level of legal method, the two presumptions are functionally aligned, albeit embedded in different regulatory structures and with different material scope⁷³. Both rely on functional indicators of control and dependency. The practical question is how the EU standard will interact with Norwegian jurisprudence, which has long applied a broad, purposive test. One can argue that the presumption complements, rather than replaces, the holistic approach developed by the Supreme Court⁷⁴. The same logic should allow for alignment with the Directive's framework: both seek to ensure that technological or contractual form does not obscure the existence of an employment relationship.

A related issue concerns collective bargaining. Together with the Court's approach in *FNV Kunsten*, the Guidelines clarify the competition-law space for collective bargaining by economically dependent solo self-employed persons, which is of direct relevance for EEA states when assessing the permissibility of such agreements⁷⁵. The Commission's Guidelines clarify that such agreements fall outside the prohibition in Article 101 TFEU where the workers are in positions of dependency comparable to employees⁷⁶. This confirms that expanding collective coverage for platform workers is compatible with

⁷² *Ibid.*

⁷³ Directive (EU) 2024/2831, Prop. 14 L (2022-2023) and WEA § 1-8.

⁷⁴ Rt. 2013 s. 354 (Avlaster 1), paras. 39-42, Rt. 2013 s. 342 (Beredskapshjem), para. 33 and HR-2016-1366-A (Avlaster 2), paras. 41-43.

⁷⁵ *FNV Kunsten Informatie en Media v Staat der Nederlanden*, (Case C-413/13); the European Commission, *Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons* (2022/C 374/02).

⁷⁶ The European Commission, *Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons* (2022/C 374/02), pts. 27-33.

EU law. For Norway, where the LDA has not been amended, the challenge will be to ensure that the interpretation of “employee” and the reach of collective agreements develop consistently with this European understanding.

In sum, both the Norwegian and the European reforms narrow the gap at the individual level by clarifying how dependency and control should be evaluated. However, they do so through different regulatory techniques: Norwegian law primarily through a general evidentiary presumption within a holistic test, and EU law through a sector-specific framework combining a rebuttable presumption with procedural safeguards relating to algorithmic management⁷⁷. Yet they also create new uncertainties at the institutional level: how to maintain coherence between individual and collective labour law, and how to operationalize enforcement in a digital and transnational economy. These questions do not undermine the reforms’ significance, but they illustrate that the “regulatory gap” cannot be closed by legislative amendments alone. It requires an interpretative and institutional alignment across the full breadth of labour law – a task that will shape the next stage of Norwegian and European labour law development.

9. *Concluding reflections*

The analysis in this article has examined whether Norwegian labour law leaves what may be described as a regulatory gap at the margins of working life. The question is ultimately one of reach and coherence: do the protective structures that have defined the Norwegian model extend to new forms of work, and are the individual and collective dimensions of protection sufficiently aligned to maintain the integrity of the system?

The introduction of a presumption of employment in § 1-8 of the WEA represents a significant reaffirmation of the Act’s social and protective function⁷⁸. The amendment codifies a purposive interpretative method, ensuring that borderline cases are resolved in light of the Act’s underlying aims. By doing so, the legislature has clarified the point of departure for assessing employment status and strengthened the normative foundation of the employee concept.

⁷⁷ Directive (EU) 2024/2831, Prop. 14 L (2022–2023) and WEA § 1-8.

⁷⁸ Prop. 14 L (2022–2023), pp. 24–32.

At the same time, the presumption rule exposes the limits of reform through legislation alone. The WEA and the LDA have always formed the two interdependent pillars of Norwegian labour law. Yet only the former has been amended. Without a corresponding interpretative clarification in the collective sphere, there is a risk that the employee concept will be applied differently in individual and collective contexts. As shown above, both doctrine and preparatory works stress that the two statutes are intended to operate coherently, but maintaining that coherence will require attention in practice as courts and institutions apply the new rule.

The European developments discussed here – most notably the Platform Work Directive and the Commission's 2022 Guidelines – reinforce a converging methodological trajectory, while relying on different regulatory techniques and material scope. Both reflect a broader European movement toward purposive and functional interpretation of employment relations, recognizing that dependency and control may take new forms in a digital economy. The Directive's procedural provisions on algorithmic management also underline that substantive protection must be matched by institutional capacity and procedural safeguards.

From a systemic perspective, the regulatory gap identified here is not a void but a measure of imbalance between different components of the legal order. The challenge is to maintain the coherence of a model that combines strong statutory protection with extensive collective regulation. Whether the Norwegian presumption rule and the EU reforms can close this gap will depend on how consistently they are interpreted and enforced, and on whether the purposive orientation of § 1-8 is allowed to guide not only individual but also collective labour law.

In this sense, the reforms now under way are best understood as part of a continuing process of adaptation. The Norwegian model has historically demonstrated resilience by translating social and economic change into legal innovation without abandoning its normative foundations. Preserving that balance – between flexibility and protection, individual rights and collective voice – remains the central task. The presumption rule and the evolving European framework provide important tools for that purpose. Their effectiveness will ultimately depend on sustained institutional engagement and a shared commitment to purposive, coherent interpretation across the individual and collective domains.

Abstract

This article examines whether Norwegian labour law contains a regulatory gap at the margins of regulated working life, focusing on the classification of workers in platform-mediated and other non-standard forms of work. The Norwegian labour-law model rests on a dual structure: statutory protection under the Working Environment Act (WEA) and collective regulation under the Labour Disputes Act (LDA). Access to both pillars depends on classification as an “employee”, making the boundary between employee and independent contractor decisive for both legal protection and collective voice.

The growth of platform work challenges this binary framework. Platform-mediated work complicates the assessment, as control is often exercised through algorithmic management, digital monitoring and task allocation systems. Workers formally designated as self-employed may in practice be economically dependent on a single platform and lack genuine entrepreneurial autonomy, yet risk exclusion from statutory safeguards and collective agreements.

Despite developments, the article identifies a potential structural misalignment.

The presumption rule has been introduced only in the WEA, not in the LDA. As a result, the interpretation of “employee” in individual labour law may not automatically align with its application in the collective sphere. Given that the Norwegian model depends on the interaction between statutory protection and collective bargaining, divergence between these two domains risks undermining systemic coherence.

The article concludes that closing this gap does not necessarily require the creation of new legal categories. Rather, it depends on consistent, purposive interpretation across individual and collective labour law and on institutional willingness to extend protection and voice to workers in evolving forms of dependency.

Keywords

Employment classification, Platform work, Presumption of employment, Collective bargaining, Regulatory gap.