

DOMESTIC WORKERS' OCCUPATIONAL SAFETY AND HEALTH IN ITALY: FROM LEGAL GAPS TO PLATFORM-MEDIATED WORK¹

Ambra Mostarda *

Abstract [It]: Il saggio riflette sulla tutela della salute e della sicurezza occupazionale nel lavoro domestico, tema che necessita di rinnovata attenzione alla luce della rilevanza sociale del fenomeno, gli elevati rischi del settore nonché l'evoluzione dello stesso anche attraverso le piattaforme digitali. L'autrice offre una panoramica sulla regolazione in materia, a partire dal sistema giuridico internazionale e l'ordinamento dell'Unione europea fino al contesto nazionale, soffermandosi sulla specialità del lavoro domestico, la costante esclusione dalla disciplina prevenzionistica nazionale, le novità della legislazione emergenziale e quelle mancate del d.l. n. 48/2023.

Abstract [En]: The essay deals with the protection of domestic workers' occupational safety and health, namely an issue that deserves renewed attention considering the social importance of this type of work, the high risk of the sector as well as its evolution also through digital platforms. The author provides an overview of the regulation on the subject, starting with the international legal system and the European Union system up to the national system, focusing on the speciality of the domestic work relationship, the unvaried exclusion from the national prevention regulation, the measures by the pandemic emergency legislation and the missed novelties of the Decree Law No. 48/2023.

SUMMARY: 1. Introduction to Domestic Work and Occupational Safety and Health. - 2. The International Legal Framework: the ILO and European Union Levels. - 3. The National Legal Framework: The Protection of Domestic Workers' Occupational Safety and Health in Italy from Law No. 339/1958 to Legislative Decree No. 81/2008. - 3.1 The National Legal Framework: The Recent Legislation. - 4. Platform-Mediated

¹ *PhD Candidate, Ca' Foscari University of Venice, Venice School of Management.

On domestic work and OSH (occupational safety and health) see F. BASENGHI, *Il lavoro domestico. Artt. 2240-2246*, in P. SCHLESINGER (diretto da), *Il Codice Civile. Commentario*, Giuffrè, Milano, 2000, p. 237; P. DE VITA (a cura di), *La tutela della salute e sicurezza nell'ambito del lavoro domestico*, Dossier Adapt, Osservatorio Nuovi lavori, nuovi rischi, 2 luglio 2009, n. 7; F. BASENGHI, *La legge 339/1958: continuità e innovazioni*, in R. SARTI (a cura di), *Lavoro domestico e di cura: quali diritti?*, Ediesse, Roma, 2010, p. 207; L. ANGELINI-P. PASCUCCI, *La tutela della salute e sicurezza dei lavoratori domestici. Nuovi spunti di riflessione dopo il d.lgs. n. 81/2008*, in R. SARTI, *op. cit.*, p. 223. Among the most recent studies on domestic work in general see S. BORELLI, *Who cares? Il lavoro nell'ambito dei servizi di cura alla persona*, Jovene editore, Napoli, 2020; S. BORELLI, *Who cares? La (mancanza di) dignità sociale per il lavoro di cura*, in *Var. temi dir. lav.*, 2020, n. 3, pp. 653-674; V. PAVLOU, *Migrant Domestic Workers in Europe: Law and the Construction of Vulnerability*, Hart Publishing, Oxford, 2021; C. DE MARTINO, *Chi bada alle badanti? La specialità del lavoro domestico alla prova del Covid-19*, in *Giornale dir. lav. e relazioni ind.*, 2021, n. 169, 1, pp. 53-78; G. PICCO, *Il welfare invisibile: lo sfruttamento legale e illegale delle colf e badanti*, in V. FILÌ (a cura di), *Quale sostenibilità per la longevità?*, Adapt University Press, Bergamo, 2022, pp. 135-150; V. PAPA, *Note a margine di V. Pavlou, Migrant Domestic Workers in Europe: Law and the Construction of Vulnerability*, *Hart Publishing*, 2021, in *Giornale dir. lav. e relazioni ind.*, 2023, n. 3, p. 501.

Domestic Work: Improving Working Conditions or Amplifying Existing Inequalities? - 5. Conclusions.

1. Introduction to Domestic Work and Occupational Safety and Health

The domestic work relationship and, specifically, the protection of domestic workers' health and safety at work is an issue that deserves renewed attention for many reasons².

Domestic workers contribute to ensuring families' well-being and work-life balance by providing paid³ care activities (e.g. childcare, assistance to the elderly) and non-care activities (e.g. household services). The social and collective value of domestic work was even more evident during the Covid-19 pandemic when caregivers limited the infection through their care work.

Domestic work is no longer a marginal phenomenon involving low interests, but a socially significant and growing phenomenon reflecting the major trends of the labour market. On the labour demand side, demographic changes and an ageing population increase the demand for long-term care and domestic work. On the supply side, the entry of women into the labour market and the changing structure of families decreases the availability of free and informal care work performed by women within families, facing an increasing labour supply from immigrant women mainly from Eastern Europe. In the background of the mentioned labour market dynamics, there is the public welfare crisis which corresponds to the development of a private or, better to say, DIY (do-it-yourself) welfare⁴.

Despite the key role in the protection of the person, his or her fundamental rights and its contribution to society and the well-known "social sustainability", domestic work in a broad sense has little legal recognition worldwide and in Europe⁵. In Italy, it is the subject of a peculiar discipline but suffers from clear regulatory gaps⁶, especially in occupational health and safety matters. The place of domestic work performance, namely the domicile of the person for whom the service is rendered, is an essential characteristic that conditions the notion of the working environment and the special nature of the risks associated with it. It is, therefore, the very characteristic of this special work, executed in a private workplace with a strong personal vocation, that justifies its exclusion from the main Italian safety and health legislation (namely the consolidated text on health and safety at work, d. lgs. No. 81/2008), in order not to extend to domestic employers the same security obligation as that imposed on businesses.

2 This essay refers only to paid domestic work and does not take into consideration the unpaid domestic work voluntarily provided by family members.

3 On the labour market trends see L. ANGELINI-P. PASCUCCI, *op. cit.*, pp. 228-229; S. BORELLI, *Who cares? La mancanza di*, cit., pp. 655-662; C. DE MARTINO, *op. cit.*, pp. 60-61; G. PICCO, *op. cit.*, p. 137; on the same trends, also at the global level, see ILO, *Making the right to social security a reality for domestic workers. A global review of policy trends, statistics and extension strategies*, International Labour Organization, 2022.

4 See the document by EFFAT, European Federation of Food Agriculture and Tourism Trade Unions, *What can the EU do to improve domestic workers' conditions?*, August 2022.

5 F. BASENGHI, *La legge 339/1958*, cit., p. 208, speaks of «logica sottrattiva», stressing the typical disapplication of parts of rules or disciplines that ordinarily regulate the employment relationship under Article 2094 c.c. (Civil Code).

6 P. DE VITA, *La tutela della salute*, cit., *passim*; L. ANGELINI-P. PASCUCCI, *op. cit.*, p. 224; ILO, *Making decent work a reality for domestic workers. Progress and prospects ten years after the adoption of the Domestic Workers Convention, 2011 (No. 189)*, International Labour Organisation, 2021, *passim*.

However, domestic work can be considered as a high-risk sector for various related factors. Domestic workers face chemical and physical risks in the workplace, involved in the exposition to toxic and unhealthy substances (e.g. household cleansers) with a general lack of protective equipment (gloves and masks), in the use of electric equipment, in the handling of dangerous items (like hot pans or knives). Physically demanding labour like moving clients with limited mobility, and monotonous and strenuous tasks involving awkward postures lead to ergonomic risks and debilitating musculoskeletal disorders among domestic workers⁷. The physical and mental fatigue resulting from performing hazardous tasks, working excessive hours, and managing situations of distress or discomfort, can be exacerbated in frequent cases of vulnerable individuals, like women⁸ and migrant workers. In this case, further challenges increasing the rate of injuries and accidents can be language and education, lack of awareness and information about working tools, but also risks of social exclusion, isolation, discrimination, psychological abuses, physical violence, and harassment in private workplaces traditionally not monitored as regular workplaces⁹. Moreover, the risks worsen, and the workers are particularly vulnerable in the widespread cases of irregular migrant workers and undeclared domestic workers¹⁰.

International and national statistics on the sector confirm the attention for domestic workers' occupational safety and health. The ILO estimates that 75.6 million people around the world perform domestic work, representing 2.3 per cent of total employment worldwide, but without even decent working conditions. Domestic work is a women-dominated sector, employing 57.7 million women. As of 2015, there were an estimated 11.5 million migrant domestic workers worldwide, approximately 8.5 million of whom are female¹¹. The demand for domestic work is expected to grow considering some of the mentioned reasons such as demographic changes and population ageing. Service providers play a growing role, and the number of digital labour platforms in the sector increased from 28 platforms in 2010 to 224 platforms in 2020¹². According to the European Commission¹³, the sector of Personal and Household Services (PHS) represents 9.5 million jobs, namely 4% of the total employment of the EU. In 30% of cases, especially in southern Europe, the household directly employs the workers, while in the remaining 70% organisations employ workers and provide the services to the household (private companies, public cooperatives, and recently collaborative economy platforms). According to national data¹⁴, more than 961.000 are registered as regular domestic workers (both caregivers and housekeepers) and more than 1 million are irregular workers, for an estimated total of 2 million domestic workers. The sector has one of the highest rates of irregular workers (52.3%), compared to the 12% of the national average.

7 On the different effects and quality of health and safety risks in relation to gender differences see L. ANGELINI-P. PASCUCCI, *op. cit.*, p. 232.

8 ILO, *Migrant Domestic Workers: Promoting Occupational Safety and Health*, International Labour Organization, 2016; P. DE VITA, *Come è cambiato il lavoro domestico: nuovi soggetti e nuovi rischi*, *Dossier Adapt*, Osservatorio nuovi lavori e nuovi rischi, 2009, n. 7, pp. 2-8.

9 Undeclared work is due both to problems related to the entry of migrant workers and to converging interests between employers and workers on the use of irregular labour, with a clear negative impact on working conditions, in terms of health and safety. See L. ANGELINI-P. PASCUCCI, *op. cit.*, p. 233.

10 ILO, *Making the right to social security a reality for domestic workers*, *cit.*, 19. The review clarifies that data collection for domestic work and specifically migrant domestic workers is difficult due to various reasons including the very nature of domestic work and the (often irregular) status of domestic workers.

11 ILO, *Making decent work a reality for domestic workers*, *cit.*, XVIII.

12 European Commission, Employment, Social Affairs & Inclusion, *Personal and household services*.

13 Domina Osservatorio Nazionale sul Lavoro Domestico, *4° Rapporto Annuale sul lavoro domestico*, 2022.

14 Decree Law No. 48/2023 «*Misure urgenti per l'inclusione sociale e l'accesso al mondo del lavoro*», converted into Law No. 85/2023. See *infra* for major details on the decree's draft version.

Regarding occupational safety and health, according to the Illustrative Report on the Italian draft «labour decree»¹⁵, which initially included provisions on domestic work, in the five-year period 2017-2021 No. 24.989 accidents of which 58 fatal, and No. 1208 occupational diseases were reported, while in the period January-November 2022 No. 4073 accidents, of which 11 fatal and No. 247 occupational diseases were reported.

On these premises, it is high time to recognise domestic work's social value, by considering again the speciality of the domestic work relationship and the related protections, as well as rethinking the rationale and actuality of classical exclusions from OSH regulation both at the European and national level, in view of the contemporary evolution of working environment and health and safety concepts.

The essay focuses on domestic workers' occupational safety and health in Italy in order to reflect on the classical exclusion of this type of work from the personal scope of comprehensive OSH national legislation and its evolution through pandemic emergency measures and the latest labour reform of 2023. Domestic work is an interesting object of study also because it allows thinking about the application of occupational safety and health at work legislation to a peculiar employment relationship for intrinsic characteristics (work performed in and for household) as well as to a new and widespread form of work such as platform work (considering the diffusion of platforms for household services and the so-called «Uber-isation of Care»¹⁶).

The paper is organised as follows. The next paragraph frames domestic work in the international and European Union legal framework. The central part of the paper is devoted to providing an overview of the Italian OSH legal and contractual regulation concerning domestic workers. Platform-mediated work is taken into consideration in its potential positive and negative impacts on workers' OSH. In the end, *de iure condendo* measures in order to overcome the shortcomings and gaps of OSH protection in the domestic sector are discussed.

2. The International Legal Framework: the ILO and European Union Levels

In 2011 at the 100th session of the International Labour Conference, the International Labour Organization adopted the ILO Convention Concerning Decent Work for Domestic Workers (Domestic Workers Convention, No. 189), establishing the first global standards for domestic workers, understood as any person engaged in domestic work within an employment relationship (Art. 1, b), and the Domestic Workers Recommendation, No. 201, supplementing the provisions of the Convention. While the Convention is a hard law instrument and binding for countries that ratify it, the Recommendation is a soft law instrument that can be used as a guidance for Member States taking measures to apply the Convention.

The two instruments are clearly part of the ILO's commitment to promote decent work for all, as declared in the Preamble to the Convention¹⁷. Domestic workers, like other workers, have the right to decent working and living conditions, while they continue to be one of the most marginalised and undervalued groups of workers in the contemporary global

15 A. TROJANSKY, *Towards the "Uber-isation" of Care? Platform work in the sector of long-term home care and its implications for workers' rights*, Workers' Group Research Report, European Economic and Social Committee, European Union, 2020.

16 S. BORELLI, *Who cares? Il lavoro*, cit., p. 89.

17 A. BLACKETT, *Introductory note to the decent work for domestic workers convention, 2011 (No. 189) and recommendation (No. 201)*, in *International Legal Materials*, 2014, vol. 53, No. 1, pp. 250-266.

economy¹⁸. For this reason, the Convention and the Recommendation adopt minimum standards for this peculiar sector.

The C189 requires the ratifying governments to ensure the effective promotion and protection of the human rights and the fundamental principles and rights at work of all domestic workers (Art. 3), provide them with the same basic rights as those available to other workers (Art. 10), protect them against all forms of abuse, harassment and violence (Art. 5), prevent child labour fixing a minimum age for domestic workers (Art. 4), regulate private employment agencies that recruit and place domestic workers (Art. 15). Pursuant to Article 10, equal treatment with other workers includes normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave, taking into account the special characteristics of domestic work. Domestic workers shall be provided with information about terms and conditions of employment (Art. 7), minimum wage coverage, where it exists (Art. 11), social security protection, including maternity protection (Art. 14), safe and healthy working environment (Art. 13), effective and accessible complaints mechanisms, measures for labour inspections, and penalties (Art. 17).

With specific reference to occupational health and safety, Article 13 states that every domestic worker has the right to a safe and healthy working environment, and, to this end, each Member shall take effective measures adapted to domestic work's specific characteristics, in accordance with national laws, regulations and practices. The Convention is flexible as these measures can be applied progressively, in consultation with the most representative organisations of employers and workers.

The Recommendation specifies that Members should take measures to protect domestic workers by eliminating or minimizing work-related hazards and risks, in order to prevent injuries, diseases and deaths and promote occupational safety and health in the household workplace (par. 19, a), provide an adequate and appropriate system of inspection (par. 19, b), establish procedures for collecting and publishing statistics on accidents and diseases related to domestic work (par. 19, c), advise on occupational safety and health (par. 19, e), develop training programmes (par. 19, e). Paragraph No. 4 is about medical testing for domestic workers.

To date, 36 countries have ratified the Convention entered into force in September 2013, including Italy. However, as denounced by EFFAT¹⁹, none of the only eight European countries having ratified the C189 have fully implemented its principles. To support the ratification of C189, on 28 January 2014, the European Union Council adopted a Decision authorising Member States to ratify the ILO convention²⁰.

To conclude this brief overview of ILO instruments on domestic work, ILO's Convention and Recommendation represent a historical set of international standards aimed at providing domestic workers with international validation of their status as workers, leading to a transnational legal order on decent work for domestic workers²¹. Clearly, the Convention and Recommendation's specific provisions on occupational safety and health question the exclusion of domestic work from the scope of health and safety regulations.

¹⁸ European Federation of Food Agriculture and Tourism Trade Unions, *op. cit.*

¹⁹ Council Decision authorising Member States to ratify, in the interests of the European Union, the Convention concerning decent work for domestic workers, 2011, of the International Labour Organisation (Convention No 189) (2014/51/EU).

²⁰ A. BLACKETT, *Regulatory Innovation on Decent Work for Domestic Workers in the Light of International Labour Organization Convention No. 189*, in *International Journal of Comparative Labour Law and Industrial Relations* 34, 2018, No. 2, specifically pp. 143-144.

²¹ V. PAVLOU, *Migrant domestic workers in the European Union: the role of law in constructing vulnerability*, Doctoral dissertation, 2016, p. 17.

Notwithstanding, and by virtue of the limitations typical of international law, there are no instruments to enforce the implementation of the Convention nor sanctions in the case of non-compliance by States²².

Shifting to the European Union legal framework on domestic workers, among the relevant actions taken by the European Union to support the ratification of the ILO convention, and beyond the mentioned Decision, it is noteworthy the European Parliament Resolution of 28 April 2016 on Women Domestic Workers and Carers in the EU (2015/2094(INI))²³. In this case, the European Parliament, considering the value of the ILO convention and that only a few Member States have ratified it, «*encourages all Member States to urgently ratify ILO Convention No 189 and to ensure that it is applied stringently so as to improve working conditions*» (par. 13).

With specific regard to OSH, the European Parliament acknowledges that domestic workers often are excluded from labour laws and, consequently, cannot be guaranteed a safe and healthy work environment, as well as often work in hazardous conditions or lack appropriate training to perform specific tasks that might result in on-the-job injuries. Even if the Directive on the introduction of measures to encourage improvements in the safety and health of workers at work (Directive 89/391/EEC) covers formally employed domestic workers and carers, with the exception of workers directly employed by private households, the European Parliament recognises that the same provisions on health and safety should be guaranteed at work for all domestic workers regardless of employment type and that the working place does not make the employer exempt from complying with health and safety and risk prevention requirements. Based on these considerations, the Parliament calls on the Commission and the Member States to ensure and enforce an appropriate level of health and safety at work and to take action to prevent work-related accidents and risks of occupational injuries and diseases; moreover, training and retraining could improve standards and encompass managing the risks around posture and movement-related tasks and biological and chemical risks, as well as the use of assistive technology (par. 17). It recalls that undeclared work deprives workers of social security cover and health and safe working conditions and, therefore, expects that the European platform against undeclared work will prevent and discourage it (par. 18). In accordance with Article 17 of ILO Convention No 189, Member States are called to develop and implement measures for labour inspection, enforcement, and penalties with due regard for the special characteristics of domestic work (such measures should specify the conditions under which access to household premises may be granted, having due respect for privacy), in order to effectively address abuses (par. 24).

On the same page, but with the aggravating circumstance of the Covid-19 pandemic, the European Parliament Resolution, adopted on 5 July 2022 Towards a common European action on care (2021/2253(INI)), recognises the unfair working conditions and the lack of recognition of informal workers in personal and household services²⁴, notwithstanding their

²² Moreover, on the 10th Anniversary of the C189, the EU-wide «ILO C189» Alliance urges the governments to ratify and implement the convention. On the resolution see V. PAVLOU, *Whose equality? Paid domestic work and EU gender equality law*, in *European equality law review*, 2020, n. 1, pp. 10-11.

²³ Personal and household services (PHS), usually defined at the global level as domestic work, are defined as a broad range of activities that contribute to the well-being at home of families and individuals, including care and non-care services. Care provision includes not only personal care but also non-relational indirect care, which provides the necessary preconditions for the provision of personal care. Very often workers perform both care and non-care activities.

²⁴ The reconsideration of the exclusion of domestic servants from the Framework Directive on minimum level of protection from work-related health and safety risks for the workers of all Member States is stressed also in

key role in the society as highlighted by the Covid-19 crisis. Consequently, the resolution calls for decent working conditions for all workers in the care sector and to effectively tackle undeclared work. In this sense, Member States should ensure social recognition, fair remuneration, and decent working conditions including adequate working hours, occupational health and safety, adequate education and training for upskilling and reskilling of workers, and ratify and implement the relevant ILO conventions, including No. 189 concerning domestic workers. With regard to OSH, it calls on the Commission and the Member States to adopt high standards of occupational health and safety, in line with and beyond the ambition of the recently adopted EU strategic framework on health and safety at work 2021-2027; highlights the need to pay special attention to the specific challenges of the sector, namely exposure of workers to hazardous substances or medicinal products, work in potentially infectious environments, as well as mental and psychosocial risks related to emotionally demanding work and encountering adverse social behaviour, in order to prevent workplace accidents and illness, and with that absenteeism, turnover and poor workers health (par. 90). The Commission is invited to propose a directive on prevention and management of work-related musculoskeletal disorders and rheumatic diseases, as well as on psychosocial risks and well-being at work.

Moreover, the Parliament underlines the need to reform the scope of the Framework Directive on the introduction of measures to encourage improvements in the safety and health of workers at work (89/391/EEC), in the sense of ensuring the inclusion of domestic workers within its scope (par. 100)²⁵.

It is noteworthy that the resolution takes into consideration the increasing share of platform work in the care sector and the related challenges. In this sense, the European directive on platform work and national legislation regulating platform economy should duly take account of the specific nature of care work, which would provide minimum standards for the quality of services and decent working conditions for workers (par. 82).

Except for the mentioned resolutions, which are non-binding acts, the European Union's legal framework does not provide other acts or measures relevant to domestic workers and their OSH protection. As anticipated, the Directive on Safety and Health at Work of 1989 does not apply to domestic workers in private households, because Article 3, letter a, states that for the purposes of the directive, the worker is «*any person employed by an employer, including trainees and apprentices but excluding domestic servants*»²⁶. The Directive, containing general principles, is without prejudice to existing or future national provisions which are more favourable to OSH protection of (domestic) workers (Art. 1, par. 3). Notwithstanding, as shown in the next paragraph, Italy confirms the choice of the European Union regarding the exclusion of domestic workers from OSH legislation.

3. The National Legal Framework: The Protection of Domestic Workers' Occupational Safety and Health in Italy from Law No. 339/1958 to Legislative Decree No. 81/2008

The next paragraphs intend to provide a systematic overview of the Italian legislation regulating the domestic work sector, both the early regulation and the recent one, in order to

the Commission Staff Working Document of 10 January 2017 on *Ex-post evaluation of the EU occupational safety and health Directives*. Furthermore, the European Parliament resolution of 15 January 2008 on the Community strategy 2007-2012 on health and safety at work (2007/2146(INI)) asks the Commission and the Member States to apply the framework directive and the existing health and safety provisions fully also to the often-ignored jobs, including domestic workers (point No. 42).

25 See M. ROCCELLA-T. TREU, *Diritto del lavoro della Comunità Europea*, Quarta edizione, Cedam, Padova, 2007, pp. 326-331.

26 See *supra* footnote No. 6.

assess the state of the art of the protection of health and safety at work. As anticipated, in fact, domestic work suffers from a typical disapplication of parts of rules that regulate the “common” employment relationship²⁷. In the national legal system, there are subordinate employment relationships that differ from the relationship in Article 2094 c.c. and that, consequently, are subject to special regulation. Domestic work is a typical case of a special employment relationship because it is not inherent in the exercise of an enterprise. What justifies a deviation from the general discipline of the employment relationship is therefore the specific context (private household) in which the work is performed²⁸.

Domestic work is regulated by Articles 2240-2246 c.c. and by Law No. 339/1958 on the protection of the domestic labour relationship. As stated in Article 2239 c.c., provisions of the Second Title on employment in the enterprise (Articles 2094-2134 c.c.) can be applied to special employment relationships such as domestic work insofar as they are compatible with the special nature of the relationship.

Law No. 339/1958, still valid, applies to domestic workers who work more than four hours a day for the same employer (Art. 1)²⁹. Article 6 on parties’ rights and duties represents the unique safety and health protection applicable to domestic workers. The Article imposes some obligations on the employer, all of which relate to the obligation to protect the employee’s psycho-physical integrity. The employer is obliged to provide the employee with an environment that is not harmful to the employee’s physical and moral integrity, where there is a commitment to board and lodging. In addition, the employer must protect the employee’s health particularly when there are sources of infection in the family. The rule, which provides for very broad guarantees, evokes the general rule on safety, i.e., Article 2087 c.c., since it protects the same goods that are physical and moral integrity³⁰. It is important to specify that Art. 2087 c.c., namely the most important rule in the prevention system, is not formally applicable to domestic work, as it is a special employment relationship extraneous to the enterprise³¹.

However, despite the clear reference to Art. 2087, a reductive interpretation of Art. 6 with regard to the notion of working environment has been affirmed, in order to avoid the burdensome obligation of Art. 2087 for the domestic employer. The working environment is reductively understood as a “room”³², and not in the actual, broader, and complex meaning

27 L. ANGELINI-P. PASCUCCI, *op. cit.*, pp. 223-224; F. BASENGHI, *La legge 339/1958*, cit., p. 208.

28 F. BIANCHI D’URSO, voce *Lavoro domestico*, in *Enc. giur. Treccani*, XVIII, 1990, P. 1; M. MC BRITTON, voce *Lavoro domestico*, in *Dig. disc. priv., sez. comm.*, VIII, Utet, Torino, 1992, p. 225.

29 Article 2087 c.c. obliges the employer to protect the physical integrity and the personal morality of every worker, by adopting any necessary measures having regard to the nature of the work involved, experience and available technical knowledge. On the relation between Art. 6 and Art. 2087 see C. TIMELLINI, voce *Lavoro domestico*, in *Dig. disc. priv., sez. comm.*, Aggiornamento, Utet, Torino, 2003, p. 581; L. ANGELINI-P. PASCUCCI, *op. cit.*, p. 225.

30 As said, Article 2239 c.c. provides for the application (subject to verification of compatibility) of the general discipline of employment in the enterprise (Title II, Book V) to special employment relationships, but it excludes Section I of Title II concerning the entrepreneur, precisely including Art. 2087 c.c. See A. VALLEBONA, *Aspetti sistematici e profili di novità della sicurezza del lavoro*, in *Dir. lav.*, 1996, I, p. 85.

31 The reductive interpretation of the working environment appears also from the limitation of cohabitation in Article 6, requiring a commitment to board and lodging. See F. BASENGHI, *Il lavoro domestico*, cit., p. 239.

32 L. MONTUSCHI, voce *Ambiente di lavoro*, in *Dig. disc. priv., sez. comm.*, I, Utet, Torino, 1987, p. 86 says that «Quando si parla di “ambiente di lavoro” non si intende (...) individuare semplicemente il luogo della prestazione (...), bensì descrivere il sostrato materiale nel quale si svolge la prestazione», meaning that the notion of working environment refers to the material substrate in which the work performance takes place. See this quotation in F. BASENGHI, *Il lavoro domestico*, cit., p. 238.

in the normal employment relationship³³. Therefore, compared to the employer's obligation under Art. 2087, a less onerous duty of health and safety protection is imposed on the domestic employer in view of the peculiar relationship, which is family-based and characterised by a high degree of trust³⁴. Whereas the entrepreneur is obliged to adopt the necessary protective measures in accordance with the state of the art of technological advances, the domestic employer is only obliged to ensure a working environment, conceived in the reductive sense of a room, that is not harmful. For sure, this strict interpretation appears to be consistent with the nature of domestic work, as it would be illogical to extend to families a dynamic obligation as that of conforming to the state of the art under Art. 2087, inherent in the business and in updating and modernising production processes³⁵. According to several authors, the domestic worker's right to health is not compromised but adequately protected by Law No. 338³⁶. In this sense, the employer must provide a non-harmful environment and undertake to provide working tools appropriate to commonly accepted safety standards; failing this, the employee is entitled to refuse the working performance without losing pay³⁷, or to resign due to an employer's behaviour that does not consent to continue collaboration between parties even on a temporary basis³⁸.

Actually, as observed by Basenghi³⁹, a different interpretation of Article 6 would have been possible due to the constitutional right to health (Art. 32 Const.), as a fundamental and prominent value. The expression working environment would have acquired a different and broad meaning, and the employer's obligation *ex* Art. 6 would have been as open as that under Art. 2087 c.c.⁴⁰. Consequently, the obligation would no longer have depended on the case of the commitment of board and lodging. In this perspective, the extension of 2087 to the sector, after evaluation of the compatibility criterion, is also supported by the Constitutional Court's judgement No. 94/1986 stating that the exclusion of the rules applied to the work within the enterprise to the special employment relationship *ex* Art. 2240 c.c. can no longer be affirmed in the new Constitutional legal framework⁴¹.

There have been many opportunities for the legislator to remedy the lack of prevention protection applied to domestic workers over time, but the legislator has always confirmed the exclusion.

The first opportunity to modify the OSH subject for the better is offered by the transposition of the European Directive on safety and health of workers at work (89/391/EEC) that, as said, does not apply to domestic workers but, at the same time, does not prevent more favourable national legislation. Italy, in the legislative decree No. 626/1994 implementing the directive, confirms the European choice by excluding from the scope of the

33 F. BASENGHI, *La legge 339/1958*, cit., 207-208.

34 C. TIMELLINI, *op. cit.*, p. 581; L. ANGELINI-P. PASCUCI, *op. cit.*, p. 226; for the concept of a static obligation for the domestic employer see F. BASENGHI, *Il lavoro domestico*, cit., pp. 241-242.

35 F. BASENGHI, *Il lavoro domestico*, cit., pp. 242-243; C. TIMELLINI, *op. cit.*, p. 581; P. DE VITA, *Come è cambiato il lavoro domestico*, cit.

36 Exception of non-performance *ex* Art. 1460 c.c. See F. MONTUSCHI, *La tutela della salute e la normativa comunitaria: l'esperienza italiana*, in *Riv. it. dir. lav.*, 1990, I, p. 384.

37 Termination for just cause *ex* Art. 2119 c.c. See G. SUPPIEJ, *Il diritto dei lavoratori alla salubrità dell'ambiente di lavoro*, in *Riv. it. dir. lav.*, 1991, I, p. 445.

38 F. BASENGHI, *Il lavoro domestico*, cit., pp. 238-239.

39 For the application of Article 2087 c.c. to domestic work see C. SMURAGLIA, *La sicurezza del lavoro e la sua tutela penale*, Giuffrè, Milano, 1974, p. 76; R. ROMEI, *Il campo di applicazione del decreto legislativo 626 del 1994 e i soggetti (art. 1, 2, 3)*, in L. MONTUSCHI (a cura di), *Ambiente, salute e sicurezza. Per una gestione integrata dei rischi di lavoro*, Giappichelli, Torino, 1997.

40 L. ANGELINI-P. PASCUCI, *op. cit.*, p. 225.

41 L. ANGELINI-P. PASCUCI, *op. cit.*, p. 235.

decree domestic workers (Art. 2, par. 1, letter a.)⁴². According to the Court of Cassation⁴³, the exclusion of domestic workers from the Decree does not entail the implicit repeal of the previous legislative provisions on the subject, such as the Presidential Decree No. 547/1955 on the prevention of accidents at work⁴⁴, which remained fully in force.

The Legislative Decree No. 81/2008, which reorganised in a consolidated text the national legislation on workplace health and safety, confirms the decision to exclude domestic work from general health and safety protection (Article 2, par. 1, letter a). Actually, the consolidated act's *ratio*, as demonstrated precisely by the same Article, is to protect all workers who carry out a work activity within the organisation of a public or private employer, regardless of the contractual type (for instance self-employed persons). Article 3, paragraph 8, reiterates the exclusion, by extending the regulation to occasional or casual work but not to small domestic work of an extraordinary nature.

The legislator's intention is therefore very clear and does not allow for different interpretations, in the light of the unclear paragraph 8 of Article 3, whereby it could be deduced that the regulation applies to domestic workers, hired under an occasional employment contract, but engaged in work of an ordinary nature. Such an interpretation would not be consistent with the choice of the legislator *ex* Article 2 to exclude domestic workers who do not perform the work in the enterprise⁴⁵.

The unjustified⁴⁶ exclusion is aggravated by the explicit and complete repeal of d.P.R. No. 547/1955, which was deemed applicable to domestic workers by the case-law even after the decree No. 626/1994. The deleted provisions were recovered in the technical annexes to the decree, but the exclusion provided by Article 2, letter a, does not allow to still apply them to domestic workers⁴⁷.

This exclusion represents a serious gap in the protection of domestic workers' safety and health and, consequently, could present profiles of unconstitutionality with reference to the principle of equality in Article 3 and the protection of health in Article 32 of the Italian Constitution⁴⁸. Moreover, it contradicts the underlying rationale of the legislation, which does not apply only to the subordinate employment relationship, but to all workers who work for others. The domestic nature of the employer, then, and the minimal organisation in which the domestic work is included, should have affected not the *an* of the protection, so its existence, but the *quantum* and *quomodo*, namely the protection's modalities⁴⁹.

In support of this interpretation, reference is also made to Article 1 of the Enabling Act No. 123/2007, according to which the legislation applies to all activities, sectors, and risks, considering the peculiarities or specific dangerousness of the risks and the specificity of sectors and work areas⁵⁰. And precisely the working environment, which represents the

42 Court of Cassation, No. 4464/2003; in favour of the judgement see L. ANGELINI-P. PASCUCCI, *op. cit.*, p. 236; *contra* see P. DE VITA, *Com'è cambiato il lavoro domestico*, cit.

43 The Decree applied to employees (Art. 1) but did not exclude from the application the domestic workers (Art. 2).

44 ADAPT (a cura di), *La tutela del lavoro domestico nel nuovo Testo Unico sulla tutela della salute e sicurezza nei luoghi di lavoro*, Dossier Adapt, Osservatorio Nuovi lavori, nuovi rischi, 2 luglio 2009, n. 7, p. 9; L. ANGELINI-P. PASCUCCI, *op. cit.*, p. 238.

45 C. LAZZARI, *Sicurezza sul lavoro e Covid-19. Appunti per una prospettiva di genere*, in *Dir. sic. lav.*, 2020, n. 1, p. 15.

46 L. ANGELINI-P. PASCUCCI, *op. cit.*, p. 240.

47 *Ibidem*.

48 *Ivi*, p. 242; C. LAZZARI, *op. cit.*, p. 15.

49 *Ivi*, pp. 240-242.

50 *Ivi*, p. 227; C. LAZZARI, *op. cit.*, p. 16.

distinctive element of the domestic employment relationship, entails several typical health and safety risks, albeit different from the risks of a company.

Drawing the conclusions of the national framework, Article 6 of Law 338/1958 represents the unique health and safety provision applying to domestic workers. Law 338/1958 is an ancient act, clearly designed for an employment relationship marginal at the time, both economically and socially⁵¹. Article 1 of d.P.R. No. 1403/1971 provides paid domestic workers with insurance protection against accidents at work⁵², maternity insurance, disability, old age, and surviving insurance.

Before shifting to the most recent legislation, it is important to state that the protection of safety and health at work for domestic workers does not improve in the case of casual work⁵³. The current discipline is that of the so-called «*Libretto Famiglia*» or Family Record Book, introduced by Law Decree No. 50/2017 (Art. 54-*bis*, par. 10)⁵⁴. Individuals can purchase, through the INPS platform, a pre-funded nominative booklet for the payment of occasional services rendered by one or more providers in the context of a range of activities: small domestic work, including gardening, cleaning, or maintenance work; home care for children and sick or disabled persons; supplementary private teaching. Paragraphs No. 2 and 3 provide these workers with disability, old age and surviving insurance, insurance protection against accidents at work and occupational diseases (d.P.R. No. 1124/1965), and the right to daily rest, breaks and weekly rest periods. Paragraph No. 3, for the purposes of protecting workers' health and safety, refers to Article 3, paragraph 8 of D. Lgs. No. 81/2008 that, as said, applies to casual work but not to small domestic work of an extraordinary nature.

3.1 The National Legal Framework: The Recent Legislation

Health and safety gaps for domestic work inevitably re-emerge with the pandemic emergency, even more so taking into consideration that domestic workers are subject to a high or medium-high risk of Covid-19 contagion⁵⁵, by performing tasks that do not allow social distancing. Domestic workers contribute managing the emergency and avoiding its worsening, taking care of vulnerable people like the elderly as well as children (following the forced closure of schools)⁵⁶.

Nevertheless, there are not many relevant OSH measures.

Article 16 of Law Decree 18/2020 («*Decreto Cura Italia*»), as amended by Article 66 of Law Decree 34/2020 («*Decreto Rilancio*»), requires the employer to provide domestic workers with masks, as it specifies that masks are considered personal protective equipment for all

51 Even if domestic work is not included in Article 1 of d.P.R. No. 1124/1965, which is the consolidated text on compulsory insurance against accidents at work and occupational diseases.

52 S. BORELLI, *Who cares? La (mancanza)*, cit., p. 663.

53 The decree also introduces casual work, which can be used by entrepreneurs, professionals, legal entities, and public administrations. The Decree aims to fill the gap left by the previous repeal of casual work and to regularise services normally not declared. (The legal qualification of casual work is irrelevant for the purposes of the applicable discipline; this type of work is defined exclusively based on income requirements).

54 Domina Osservatorio Nazionale sul Lavoro Domestico, *Il lavoro domestico e l'emergenza COVID-19. (Estratto del Rapporto annuale sul lavoro domestico 2020)*, Dossier 12, p. 66; INAIL, *Documento tecnico sulla possibile rimodulazione delle misure di contenimento del contagio da SARS-CoV-2 nei luoghi di lavoro e strategie di prevenzione*, Aprile 2020; C. DE MARTINO, *Chi bada alle badanti?*, cit., 70; G. PICCO, *op. cit.*, p. 148.

55 In this sense, paragraphs No. 8 and 9 of Article 23, and paragraph No. 3 of Article 25 of the Law Decree No. 18/2020 provide bonuses for acquiring babysitting services through the mentioned Family Record Book. See S. BORELLI, *Who cares? La (mancanza)*, cit., pp. 666-667.

56 C. DE MARTINO, *op. cit.*, p. 70; C. LAZZARI, *op. cit.*, p. 16.

workers and volunteers, both medical and non-medical, including domestic workers, who are unable to maintain a social distancing of one metre during the activity performance⁵⁷.

In addition, according to the national strategic plan for vaccines (the Ministerial Decree of 12 March 2021), cohabiting family members and caregivers who provide free or contracted continuous care to severely disabled persons (pursuant to Law 104/1992, Art. 3, par. 3⁵⁸) are classified as priority categories for vaccination.

Therefore, during the emergency phase, the legislator paid more attention to domestic work, even if minimal.

The negative trend on OSH for domestic workers continues even in the most recent legislation, in particular in the so-called «Labour Decree» No. 48/2023. In fact, the draft decree provided that domestic workers (as defined by Law No. 339/1958) could request to be subjected to health surveillance under Article 41, D. Lgs. 81/2008⁵⁹ at INAIL's territorial structures, without any costs for the employer. However, the Decree's final version excludes this measure, along with other favourable measures for domestic workers⁶⁰.

The legislator's serious lack of attention to domestic work continues, despite the awareness of the absence of safety and health protection and the high accident rate in the sector, as demonstrated in the Illustrative Report on the Italian draft labour decree⁶¹.

As for the protections provided for by collective bargaining, reference should be made to the national collective agreement of reference for the sector, NCBA domestic work or *Fidaldo*, renewed on 8 September 2020⁶². Article 28 merely provides for the employee's right to a safe and healthy working environment, as affirmed by law. To this end, the employer is obliged to ensure the presence of a residual current circuit breaker on the electrical installation. The employer shall ensure that the worker is informed of any risks existing in the working environment, also relating to the use of work equipment, including telematic and robotic tools, and exposure to chemical, physical and biological agents. On the other hand, there are no training obligations regarding safety in the workplace, as required by ILO Recommendation No. 201 (point 19, letter e). The joint bilateral body Ebincolf, according to Article 48, can establish a specific institution to analyse and study the safety matter, as well as promote information about security.

With reference to the Covid-19 pandemic, the 2020 shared protocol to contain the contagion signed by social partners does not provide any measures for domestic workers⁶³.

4. Platform-Mediated Domestic Work: Improving Working Conditions or Amplifying Existing Inequalities?

57 In 2020, the first vaccine plan did not include caregivers. Regarding the 2021 vaccines plan, including domestic workers, see the positive comment of the employer's association Assindatcolf on the page of the newspaper Repubblica.it, March 14th, 2021.

58 For instance, Article 41 includes preventive medical examination to ascertain contraindications to work and assess the worker's suitability for the job, and periodic examinations to check the worker's state of health.

59 The increase of the deductibility of social security contributions, reducing the labour tax wedge (with related wage growth) and the hiring incentives.

60 Pp. 86-87.

61 The agreement is signed by the federations belonging to the main national confederations (Filcams-CGIL, Fisascat-CISL, UILTuCS), by an important trade union (Federcolf), and the most active employers' associations (Fidaldo and Domina). For major details on this agreement and other agreements see S. BORELLI, *Who cares? Il lavoro*, cit., pp. 170-190.

62 "Protocollo condiviso di regolamentazione per il contenimento della diffusione del Covid-19", signed on March 2020.

63 See, *supra*, § 1.

As stated before, domestic and care work gives the opportunity to deepen the protection of safety and health at work for new forms of work such as platform work⁶⁴. In fact, the so-called “on-demand economy” and, thus, digital labour platforms are spreading also to sectors such as household services and healthcare (in this sense there is talk of «*Uber-isation of Care*»⁶⁵). However, in the political and academic⁶⁶ debate, as well as in the case law⁶⁷, the attention is mainly given to “riders” within the transportation and food-delivery sectors, without considering the significant spread of platforms in a vulnerable labour market segment such as domestic work⁶⁸. In all these cases, the platforms’ functioning is similar. In the “work-on-demand via app”, in fact, traditional work activities like transport and cleaning, carried out locally, are managed online by platforms. Conversely, in the so-called “crowdwork”, online platforms assign to a crowd of operators easy or difficult job tasks to be completed online. Beyond this useful but not rigid dichotomy, in any case, digital platforms quickly match labour supply and demand, minimising transaction costs as well as labour costs as workers are usually classified as independent contractors⁶⁹.

In the case of domestic work, an important element to be stressed is that platforms intervene in a sector that is characterised by informal and undeclared work and, consequently, the lack of basic labour protections. From this point of view, digital platforms represent an opportunity to exclude undeclared and informal work, formalise the employment relationship and improve working conditions. At the same time, as with many other work platforms, it is not clear whether platforms can improve working conditions or, conversely, worsen existing challenges and inequalities⁷⁰.

64 A. TROJANSKY, *Towards the “Uber-isation” of Care?*, cit.

65 V. DE STEFANO, *Introduction: crowdsourcing, the gig-economy and the law*, in *Comparative Labor Law & Policy Journal*, 2016, vol. 37, No. 3, pp. 1-10.

66 See, *ex multis*, G. SANTORO-PASSARELLI, *Il lavoro mediante piattaforme digitali e la vicenda processuale dei riders*, in *Diritto delle Relazioni industriali*, 2021, n. 1, 111; M. BIASI, voce *Lavoro digitale*, in *Digesto delle Discipline Privatistiche – sezione Commerciale*, Aggiornamento IX, Utet, Torino, 2022, p. 259.

67 On this issue see P. NICASTRO, *I mercati digitali del lavoro. Lavoratori delle piattaforme – Evidenze sui dati Inapp-Plus*, Presentazione presso l’XI Commissione Lavoro pubblico e privato della Camera dei Deputati, 25 Settembre 2019; F. FLANAGAN, *Theorising the gig economy and home-based service work*, in *Journal of Industrial Relations*, 2019, vol. 61, No. 1, p. 66; F. CAPPONI, *Servizi alla persona: il caso dei lavoratori domestici e dell’assistenza domiciliare via App*, in *Bollettino ADAPT*, 2020, n. 39; S. BORELLI, *Who cares? La (mancanza)*, cit., p. 669; I. PAIS, *Le piattaforme di lavoro domestico: il caso Helpling*, in I. PAIS-A.M. POLLENZINI (a cura di), *Il tassello mancante. L’intervento organizzativo come leva strategica per la transizione tecnologica*, Fondazione Giacomo Feltrinelli, Milano, 2021.

68 On the distinction between the work-on-demand via app and the crowdwork, but also the similarities justifying a joint analysis of the phenomenon, see V. DE STEFANO, *Introduction: crowdsourcing, the gig-economy and the law*, cit., *passim*; M. BIASI, *op. cit.*, pp. 267-268; on the distinction between the digital platforms, under the term of crowdwork, see A. DONINI, *Il lavoro attraverso le piattaforme digitali*, Bononia University Press, Bologna, 2019, pp. 5-21.

69 A. HUNT-F. MACHINGURA, *A Good Gig? The rise of on-demand domestic work*, ODI Working Paper, n. 7/2016; A. TROJANSKY, “*Uber-isation*” of care?, cit.; J. FUDGE-C. HOBDEN, *Conceptualizing the role of intermediaries in formalizing domestic work*, Inclusive Labour Markets, Labour Relations and Working Conditions Branch, Conditions of work and employment series No. 95, International Labour Office, Geneva, 2018, specifically p. 14. On the ambivalent role of domestic cleaning platforms, especially for minority and migrant workers, see N. VAN DOORN, *Stepping stone or dead End? The ambiguities of platform-mediated domestic work under conditions of austerity. Comparative landscapes of austerity and the Gig economy: New York and Berlin*, in D. BAINES-I. CUNNINGHAM (ed.), *Working in the Context of Austerity. Challenges and Struggles*, Bristol University Press, Bristol, 2021, pp. 49-69.

70 On the specific aspect of health and safety at work for platform workers see A. DELOGU, *Salute, sicurezza e “nuovi” lavori: le sfide prevenzionali nella gig economy e nell’industria 4.0*, in *Diritto della sicurezza sul lavoro*, 2018, n. 2, p. 37; M. LAI, *Il lavoro mediante piattaforme digitali: quali tutele?*, in *Lavoro Diritti Europa*,

This paragraph, by linking domestic work to platform work, aims to shed light on the phenomenon and offer insights into occupational safety and health for platform-mediated domestic workers⁷¹.

In the case of platform-mediated work, the regulation of occupational health and safety depends on the legal qualification of the employment relationship between the worker and the platform⁷². Based on the modalities of work performance and organisation, and the greater or lesser impact of the platform on these aspects, platform workers can be classified as employees or, on the contrary, self-employed, with obvious consequences for the application of OSH national regulation.

As in most cases, platforms act as marketplaces, namely mere intermediaries⁷³ matching the worker and the client, without any obligation towards workers. In this connection, it is interesting to mention a ruling by the court of Amsterdam of 21 September 2021 qualifying the relationship between *Helping*, a leading marketplace in household and care services, the staff entrusted with care and cleaning services in the home and the user families, as labour supply⁷⁴. The relationship between the platform, users and workers is tripartite, with the employment agency placing workers at the disposal of users. Consequently, the platform acts as an employment agency, endowed with typical powers and prerogatives such as control over economic transactions between workers and users. Instead, the user's power to supervise and organise the work performance does not determine the existence of a direct employment relationship with the service provider.

This case is relevant to the purpose of this essay because, at the national level, the recognition of platforms as supply agencies would result in the application of employment protections to workers, even if there could be some obstacles linked to the peculiar nature of domestic work. In this sense, the National Labour Inspectorate (INL) note of 21 June 2017, No. 5617 specifies that in the case of illegal job supply and non-authorised agencies, the administrative penalty applies only against the agency and not against the private family user who, therefore, will not be liable under Articles 35 and 38 of Legislative Decree 81/2015⁷⁵. Therefore, the peculiarity of domestic work, namely the weak economic and social position of families, would affect the joint and several liability between the supplier and the user, the workers' protection and the platforms' burdens⁷⁶.

2022, n. 2, p. 6; see also the report by European Agency for Safety and Health at Work (EU-OSHA), *Digital platform work and occupational safety and health: overview of regulation, policies, practices and research*, 2022.

71 On the classification of platform workers see, *ex multis*, A. TODOLÌ-SIGNES, *The "Gig Economy": Employee, Self-Employed or the Need for a Special Employment Regulation?*, in *Transfer: European Review of Labour and Research*, 2017, vol. 23, issue 2, pp. 193-205.

72 In general, on the typology of intermediaries and their potential impact on formalising domestic work and providing decent work for domestic work see J. FUDGE-C. HOBDEN, *op. cit.*, *passim*.

73 See the comment by I. TAGLIABUE, *Lavoro di cura e piattaforme digitali: note a margine di una sentenza del Tribunale di Amsterdam*, in *Dir. Rel. Ind.*, 2022, n. 1, XXXII, p. 355.

74 Article 38 is about illegal job supply and provides, consequently, that the workers are considered as employed by the user; while Article 35 is about workers' protection, equal treatment and joint and several liability between the supplier and the user. Regarding health and safety, according to Article 35, par. 4, the information and training obligations on the risks and the work equipment, as required by Decree No. 81/2008, are the responsibility of the agency, unless otherwise provided for in the contract which places the obligation on the user. The user shall comply with the same obligations of prevention and protection imposed by law and collective agreements towards its own employees.

75 S. BORELLI, *Who cares? La (mancanza)*, cit., pp. 669-670; I. TAGLIABUE, *Lavoro di cura*, cit., pp. 359-360.

76 S. BORELLI, *Who cares? La (mancanza)*, cit., p. 670, according to which the family record book is not well suited to the platforms' business model, since payment is not direct but made through the INPS portal.

Looking at the reality of the on-demand economy, almost all platforms operating in Italy present themselves as mere intermediaries between labour supply and demand. Some of them suggest the formalisation of the employment relationship between the worker and the family through the domestic work contract or the casual contract⁷⁷.

Yoopies presents itself as a matching platform operating in the sector of personal services like babysitting, home-care activities, cleaning, tutoring, and pet setting. The platform discourages undeclared work and encourages all its users to request or propose a regular employment contract, in order to have a safe working environment. The platform provides a permanent employment contract template, and among the necessary information to sign the contract, there is the certification of fitness to work following a medical examination whose costs shall be paid by the employer. Moreover, the platform explains how to pay casual workers through the Family Record Book. The Italian website gives information on Covid-19 safety issues and suggests preventive measures⁷⁸.

Le Cicogne is a platform for the matching of clients and babysitters. It offers the possibility of formalising the employment relationship with a regular full or part-time contract, or a fixed-term employment contract. It takes care of the administrative management of the employment relationship relating to payment, severance pay, and holidays. Each contract includes INAIL insurance to cover the worker.

Badacare is a platform facilitating the search for employment in the elderly care sector. It offers support to clients in the administrative management of the employment relationship and provides them with information about the domestic work contract (permanent or fixed-term, full-time or part-time) and the collective agreement. Moreover, the platform provides training courses to workers in order to increase knowledge in elderly care work.

Helping presents itself as Europe's leading marketplace for household and cleaning services. The website specifies that all registered cleaners are self-employed, and liability insured with a liability insurance which covers all damages up to € 5,000,000 with a deductible of € 500. For damages below this amount, clients can directly reach out to the cleaner involved and align with them on the compensation. The website does not provide any relevant information on safety and health, except for guidelines for risk management from Covid-19 and a training webinar for workers. On a voluntary basis, workers could indicate their vaccination status on their personal profile.

From this brief excursus on platforms' examples, it can be deduced that all the platforms are mere intermediaries, with no obligation to protect workers' health and safety. In general, there are no forms of trade union aggregation for platform workers nor workers' safety representatives⁷⁹. Anyway, platforms voluntarily implement OSH-related measures, including transparency, information, and training. Therefore, the reality of technological evolution and platforms could be beneficial to domestic workers to a small extent.

⁷⁷ European Commission, *Exploratory study of consumer issues in online peer-to-peer platform markets Task 4 – Case study: Yoopies*, Directorate-General for Justice and Consumers EU Consumer Programme, February 2017.

⁷⁸ In general, on gig economy and trade unions see M. FAIOLI, *Jobs “App”, Gig economy e sindacato*, in *Riv. Giur. Lav.*, 2017, n. 2, p. 291; for a sociological perspective and a focus on the obstacles to the representation of platforms workers, see H. HEILAND, *Workers' Voice in platform labour: An Overview*, WSI Study, No. 21, Hans-Böckler-Stiftung, Wirtschafts- und Sozialwissenschaftliches Institut (WSI), Düsseldorf, 2020; on challenges for collective bargaining and unionisation in the domestic work sector and the gig economy see N. SEDACCA, *Domestic work and the gig economy*, in V. DE STEFANO-I. DURRI-C. STYLOGIANNIS-M. WOUTERS (Eds.), *A Research Agenda for the Gig-Economy and Society*, Edward Elgar Publishing, Cheltenham, 2022, pp. 149-166.

⁷⁹ In this sense, A. DELOGU, *op. cit.*, pp. 44-46.

At present, on the one hand, the gig economy can represent an opportunity to reduce the amount of illegal work and improve transparency and recruitment conditions in a critical sector like domestic work. On the other hand, the gig economy could add to the sector its own issues, namely a new labour market tool to exploit workers without protections and compliance with national regulations on work's legal classification or labour supply. In this framework, to grasp the potential opportunities of platforms, it is important to regulate the sector, for instance by introducing safety burdens and obligations for labour intermediaries, regardless of the contractual qualification⁸⁰, or through specific legislation such as the European Commission Proposal for a Directive on improving working conditions in platform work, concerning the introduction of a legal presumption of employment status⁸¹.

5. Conclusions

To conclude, domestic workers' health and safety protection arises both at the international and European level as well as at the national level.

At the European level, one possible measure to strengthen domestic workers' occupational health and safety protection could be extending the scope of the Framework Directive of 1989 by including domestic workers, as well as extending social dialogue in the personal and household services sector⁸².

Moreover, it is fundamental to take into account the «*additional challenges related to the increasing share of platform work in the care sector*» and, in this sense, the mentioned 2022 European Resolution recommending decent working conditions for all workers in the care sector, «*stresses that the European directive on platform work and national legislation regulating platform economy should duly take account of the specific nature of care work, which would provide minimum standards for the quality of services and decent working conditions for workers*» (par. No. 82).

At the national level, the exclusion of domestic work from general health and safety regulation is to be contextualised in a different era, in which the role of domestic work was marginal. What was said at the beginning, i.e., the importance and diffusion of domestic work, also through digitalisation, the available data on accidents at work and the sector's risks, as well as the international and European indications, cannot but lead to a rethinking and renewal of the protection for domestic work. Specific regulation could be envisaged that considers the peculiarities of the working environment and domestic labour relations, the consequent specific risk-based prevention and protection requirements, and that imposes minimum health and safety rights and obligations on the parties⁸³. In other words, the specific elements that characterise the domestic labour relationship and have historically caused its exclusion from the general discipline should be enhanced to rethink the regulation and improve domestic workers' OSH protection.

80 Proposal for a directive of the European Parliament and of the Council on improving working conditions in platform work, Brussels, 9.12.2021 COM(2021). For a comment see V. De Stefano-A. Aloisi, European Commission takes the lead in regulating platform work, in *Social Europe*, 9 December 2021; V. De Stefano, The EU Commission's proposal for a Directive on Platform Work: an overview, in *Italian Labour Law e-Journal*, 2022, vol. 15, No. 1, pp. 1-11.

81 See in this sense the proposals by EFFAT, What can the EU do to improve domestic workers' conditions?, cit., and the 2022 European Parliament Resolution on a common European action on care.

82 L. ANGELINI-P. PASCUCCI, *op. cit.*, pp. 242-243.

83 The essay is a reworking of the speech given at the seminar *Recent regulatory trends of HSE and the Workers' Statutes. The impact of National Legislations on the New Forms of Work*, held in Sapienza University of Rome in October 2023, 19th.