

Bridging the Gap between Malaysian Employment Law and ILO Standards on Gig Workers' Rights

*Merapatkan Jurang antara Undang-undang Pekerjaan di Malaysia dan
Piawaian ILO mengenai Hak Pekerja Gig*

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Received: 27-2-2025 /Accepted: 16-6-2025

ABSTRACT

The rapid rise of the gig economy has created new challenges in ensuring legal protection for workers. Classifying gig workers as independent contractors often excludes them from traditional employment law protections, especially in jurisdictions like Malaysia, where the laws primarily focus on employees with formal contracts. This research aims to investigate the influence of the International Labour Organization (ILO) standards on gig workers' rights and to assess how Malaysian employment law aligns with the ILO standards. Although the ILO has not established specific conventions targeting gig workers, certain general labour standards may still offer guidance for enhancing protections within the gig economy. For example, the ILO's Decent Work Declaration offers protections such as fair wages, occupational safety, and social security that can benefit gig workers. This study adopts a doctrinal and analytical approach, analyzing both legal and non-legal sources. It includes a comprehensive review of ILO instruments, Malaysian employment law, and relevant journal articles and reports, to identify similarities and discrepancies between the legal frameworks. The analysis focuses on the ILO's impact on gig worker protections. This research evaluates the scope and provisions of Malaysian law in ensuring protections such as minimum wages, social security, and dispute resolution mechanisms for gig workers, based on their legal status against the backdrop of the ILO standards. This study adds to the continuing discussion about the gig economy by fusing state laws with global norms.

Keywords: Employment law; gig workers; International Labour Organization (ILO); Malaysia; employment law; workers' rights

ABSTRAK

Pertumbuhan pesat ekonomi gig telah mewujudkan cabaran baru dalam memastikan perlindungan undang-undang untuk pekerja. Mengklasifikasikan pekerja gig sebagai kontraktor bebas sering mengecualikan mereka daripada perlindungan undang-undang pekerjaan tradisional, terutamanya dalam bidang kuasa seperti Malaysia, di mana undang-undang lebih menumpukan kepada pekerja dengan kontrak formal. Penyelidikan ini bertujuan untuk menyiasat pengaruh Pertubuhan Buruh Antarabangsa (ILO) terhadap hak pekerja gig dan untuk menilai bagaimana undang-undang pekerjaan Malaysia selaras dengan piawaian ILO. Walaupun ILO tidak menggubal konvensyen khusus untuk pekerja gig, piawaian buruh tertentu ILO mungkin masih boleh menawarkan panduan untuk mengukuhkan perlindungan dalam pekerjaan gig. Sebagai contoh, Deklarasi Kerja Memuaskan ILO menawarkan perlindungan seperti gaji yang adil, keselamatan pekerjaan, dan jaminan sosial yang boleh memberi manfaat kepada pekerja gig. Kajian ini menggunakan pendekatan doktrinal dan analitikal, menganalisis kedua-dua sumber undang-undang dan bukan undang-undang. Ia termasuk kajian menyeluruh mengenai instrumen ILO, undang-undang pekerjaan Malaysia, dan artikel serta laporan jurnal yang relevan, untuk mengenal pasti persamaan dan percanggahan antara kerangka undang-undang. Analisis ini memberi tumpuan kepada kesan ILO terhadap perlindungan pekerja gig. Penyelidikan ini menilai skop dan peruntukan undang-undang Malaysia dalam memastikan perlindungan seperti gaji minimum, keselamatan sosial, dan mekanisme penyelesaian pertikaian untuk pekerja gig, berdasarkan status undang-undang dengan berlatarbelakangkan piawaian ILO. Dengan mengintegrasikan undang-undang kebangsaan dengan piawaian antarabangsa, penyelidikan ini menyumbang kepada perbincangan yang berterusan mengenai ekonomi gig. Ia menekankan keperluan untuk reformasi undang-undang buruh yang selaras dengan perkembangan ciri pekerjaan, memastikan hak pekerja dilindungi dengan secukupnya selaras dengan amalan kontemporari dan norma antarabangsa.

Kata kunci: Undang-undang pekerjaan; pekerja gig; Pertubuhan Buruh Antarabangsa (ILO); Malaysia; undang-undang pekerjaan; hak pekerja

INTRODUCTION

The number of gig workers (GWs) is growing, encompassing individuals engaged through digital platforms in industries like ridesharing, service suppliers, and various professional tasks. Gig work encompasses employment arrangements characterized by short-term engagements and project-based compensation, with platform work representing this category (Peetz, 2023). This study examines the location-based platform segment of gig work, which involves employment facilitated by online digital platforms in food or goods delivery sectors (p-hailing) and e-hailing sectors such as Grab, Foodpanda, ShopeeFood, and Lalamove.

These websites or platforms link customers with workers or service suppliers, requiring workers to complete tasks at designated physical locations. Gig labour differs from traditional freelance work in that it relies on online digital platforms that use algorithms to match workers with job opportunities. These platforms also feature transparent rating systems for performance tracking, enabling both platforms and clients to assess GWs remotely. (Zwettler et al., 2024).

Studies conducted by the International Labour Organization (ILO) at the global level categorize platform work as gig work (De Stefano et al., 2021). The Institute of Labour Market and Analysis (ILMIA) reports that the gig economy (GE) has become a big driver of business growth in Malaysia, a key part of RMK-12. It has created new job and income opportunities across many industries. The Edge Market (2021) indicated that approximately 40% of Malaysian workers are projected to become GWs, twice the global average. Most GWs focus on local, service-orientated tasks including ride-hailing, delivery services, and specific task-based activities. The predominant age group of GWs is 25-34 years, comprising 39% of the total (MyDigital Corporation and Ipsos, 2024). The GE is characterized by flexible employment, allowing workers to choose when, where, and how many hours they wish to work, appealing to individuals seeking autonomy in their work arrangements and entailing online platforms business model to optimize operational capacities and adjust the workforce as needed (Heeks et al., 2021).

GWs are frequently categorized as independent contractors (ICs) (Aloisi & Stefano, 2020; Tan, 2021; Peetz, 2023; Abdullah et al., 2024; Abdul Rahim et al., 2021). As a result, they frequently lack access to employment rights, such as minimum wage, social security protection (Hassan et al, 2024), occupational safety and health (Abu Seman & Hassan, 2024), and dispute resolution mechanisms (Hiebl, 2022; Tanel & Aleksi, 2022; Abdullah et al., 2024).

According to ILMIA (2022), 63.21% of gig worker respondents reported that digital platforms failed to offer compensation for services rendered that met the required minimum wage rate. The reliance on algorithmic systems to improve workers efficacy and the bi-evaluation systems with buyers or customers increase the risk of GWs being exploited by digital platforms. GWs may be motivated to accept remuneration below the minimum wage while working extended hours (Uchiyama et al., 2022). The situation worsens as GWs do not have sufficient dispute resolution mechanisms to address grievances with platforms, including the ability to present their defenses when penalized for negative customer reports (Uchiyama et al., 2022). Hinderances to fundamental security protections, including the Employees Provident Fund (EPF) and medical insurance under the Employees' Social Security Act 1969 (ESSA), available to traditional employees, is also a disadvantage. This results in financial vulnerability, particularly during illnesses or workplace accidents, and contributes to an unstable retirement plan (Abdullah et al., 2024). Advocacy for GWs' rights often argues that these workers face risks and challenges more than the formal workers (Katiyatiya & Lubisi, 2025; Stanford, 2017).

In Malaysia, GWs have limited social protection, as they can only voluntarily join existing social security schemes, but they are not officially recognized or granted legal rights under employment law. The Malaysian government is, currently, introducing a specific Bill in Parliament to regulate the GE. This Bill defines a gig worker, wages, dispute resolution, and social security protection (Lai, 2025). Furthermore, to enact the legislation, the government has formed the Malaysian Gig Economy Commission (SEGiM), composed of government officials, GWs, and industry stakeholders. SEGiM will formulate and regulate policies concerning the GE in Malaysia (Ministry of Human Resources, 2024).

The ILO has created a framework to develop and enforce global labour standards to promote social justice. The ILO's role is tough, especially with the global challenges affecting the workforce, like the complex relationship between employers and workers (De Stefano, 2021). This complexity has partly arisen from the rapid growth of the GE, while the labour standards created by the ILO are still often tied to the idea of traditional, limited employment contracts.

To stay relevant as a leading international agency on modern labour issues, the ILO began to change its approach. While the ILO continues to prioritise the ratification of conventions as its primary mechanism for enforcing international labour standards, it has progressively supplemented this approach with soft law instruments, including programmatic frameworks, guidelines, and recommendations. In an effort to offer more adaptable and responsive guidance in emerging areas of employment, these non-binding measures frequently necessitate increased involvement from employers' and workers' organisations (Servais, 2011). However, they do not replace the binding nature of conventions, which are fundamental to the ILO's normative framework.

These instruments establish objectives that can be accomplished through political, economic, informational, or non-legal activities, and training campaigns. The ILO's notion of decent work employs this strategy (Servais, 2011). The decent work concept encompasses a wide range of important aspects of work, including the ability to express opinions, organize, the provision of a safe and conducive workplace, the receipt of social protection guarantees, the potential for personal development and social integration, and the guarantee equal treatment (International Labour Conference, 1999). The agenda for decent work prioritizes the inclusiveness of all workers, irrespective of their employment type or position. The authors contend that, in light of the ILO's role structure, policies, and approaches, it is crucial to evaluate the scope to which the labour standards established by the ILO may be harmonized or modified to safeguard GWs in Malaysia.

However, this study does not aim to evaluate how well international regulations can tackle the challenges GWs face, like Novitz's (2020) idea of using principles like universality, human rights, and equality to support uniform rights for this group. With this in mind, the 'Results and Discussion' section focuses solely on meeting the research goals and is split into three main subsections. The first subsection looks at the current protections GWs in Malaysia and reviews industry practices. The next subsection explains the protective standards set by relevant ILO guidelines for GWs and compares them with Malaysia's regulations. Finally, the authors examine how well ILO strategies align with Malaysia's efforts to improve GW's rights.

METHODOLOGY

This study employs qualitative and doctrinal methods. The data utilized in this research were exclusively gathered through library studies. To understand the protections of GWs in the Malaysian context, a content analysis approach was employed to reference legal and non-legal sources. The authors adopted qualitative research defining a research topic, developing a research framework, collecting and analyzing data, and interpreting the findings. The authors examine the current terms and conditions of GW's job by interpreting the data, using the pertinent provisions from key employment statutes and the case law. Reference is also made to secondary material available, such as websites, journals, newspapers, and books. Meanwhile, to examine the protections afforded to GWs by the ILO, the authors reviewed pertinent ILO Conventions, Recommendations, reports, policy papers, and working papers issued by the ILO and its agencies. The examination of both legal and non-legal sources centers on the theme of protections for GWs, including their legal status, minimum wages, social security, and dispute resolution mechanisms. Functional comparative analysis is utilized to identify the differences and similarities between the standards established by Malaysian law and the ILO.

RESULTS AND DISCUSSION

REGULATORY FRAMEWORK FOR GIG WORKERS' RIGHTS IN MALAYSIA AND ISSUES

LEGAL STATUS OF GIG WORKERS

The Malaysian employment legal framework classifies workers into two categories: employees and ICs, with legal protection limited to those designated as 'employees'. Employment relationships are mainly governed by the Employment Act 1955 (EA 1955), the Sabah and Sarawak Labour Ordinances, the Industrial Relations Act 1967 (IRA 1967), and the Trade Unions Act 1959. These laws define an 'employee' or 'workman' as an individual who holds a contractual employment agreement with an employer. GWs, on the other hand, are generally categorized by platforms as ICs within the framework of platform-based relationships. Consequently, they are not engaged under a formal service contract and do not receive protections afforded by relevant laws.

In *Loh Guet Ching's case* (2022) the High Court (HC) upholds the stance that the applicant was not an employee of Grab, and the Court of Appeal (COP) later confirmed it. The COP upheld the HC decision. The HC indicated that this relationship constituted a business arrangement wherein Loh acted as an indirect party (Anbalangan, 2023). The HC's decision addressed critical factors to determine the lack of an employer-employee relationship between the parties concerned. Firstly, Grab did not exert control over Loh; rather, she had the autonomy to utilize the digital websites and was not restricted from engaging with other websites. The HC was asked to examine cases adjudicated in foreign jurisdictions, including *Aslam's case* (2021) in the United Kingdom and *Arachchige's case* (2020) in New Zealand which acknowledged the status of e-hailing drivers as workers platforms' companies. However, the HC, considering the local law, determined that Malaysian employment law did not recognize e-hailing drivers as employees. This is suggestive of Malaysian labour law's formalistic approach, which extensively leverages conventional employment indicators, including control and dependency. According to Abdullah et al. (2024), the diversity of the gig economy complicates legal classification, as gig workers encompass several

industries with differing work arrangements, rendering the adoption of a consistent legal definition to accommodate their position challenging.

Other employment statutes, such as the Employees' Social Security Act 1969 (ESSA), Employees Provident Fund Act 1991 (EPFA), and Minimum Wage Orders, provide a similar definition of 'employee,' thereby restricting their protections to individuals engaged under a contract of employment.

It is important to highlight that a recent amendment to the EA 1955, specifically Section 101C, delineates criteria that include the control element, as established in the case of *Loh Guet Ching*. This provision may facilitate the inclusion of gig workers within the employee definition under the EA 1955, granting them access to the benefits and protections afforded to traditional employees. Section 101C of the EA 1955 establishes that a presumption of employment exists, delineating the employment contract between the employer and employee. The criteria that must be fulfilled to establish the presumption include the employer's control over the employee's work manner and hours; provision of tools, materials, or equipment by the employer for the employee's tasks; the work being integral to the employer's business; the employee's job exclusively benefiting the employer; and the employee receiving regular payments for their work, which constitute the majority of their income. To invoke Section 101C, an employee must show that at least one of the specified indicators exists in their relationship with the hiring party. While this new provision is expected to clarify gig worker status, its actual application remains uncertain, as no cases have been tested thus far.

MINIMUM WAGES

The National Wages Consultative Council Act 2011 (NWCCA 2011) and the Minimum Wage Order 2024 (MWO 2024) are regulatory frameworks that govern minimum wage determination in Malaysia. These measures specifically protect the rights of individuals classified as 'employees' under the Malaysian employment statutes. Consequently, minimum wage laws explicitly exclude GWs. The MWO 2024 establishes the minimum wage at RM1,700. In their study, Mohd Nadzri and Nordin (2023) reported that p-hailing GWs working 12–15 hours per day earn a medium weekly gross wage of RM1,000. However, gross earnings do not account for job-related expenses such as fuel or vehicle maintenance, which significantly reduce the actual net income. In comparison, a separate survey by Goh (2019) found that most 'full-time' GWs, defined as those working no more than 48 hours per week, reported net monthly earnings above RM2,000. When these findings are read together, they suggest that GWs must consistently work at least 8 hours per day, six days a week, merely to achieve earnings at or slightly above the statutory minimum wage.

Another concern is that digital platform companies determine and govern the income rate structure (Mohd Nadzri & Nordin, 2023). As a result, the GWs' wage is subject to periodic payment reviews by the platforms, leading to an unstable income rate. Conversely, the main issue with e-hailing drivers' earnings is the lack of legislation establishing minimum and maximum rate standards within their industry (Mohd Nadzri & Nordin, 2023). As a result, competition among e-hailing digital platforms leads to arbitrary fare reductions, which entails the remuneration obtained for each drive diminishing. The lack of wage regulations renders GWs at risk of exploitation, denying them legal protections for a minimum wage. The control exerted by digital platforms over GWs' activities further raises significant concerns regarding the potential manipulation of compensation rates for GWs.

SOCIAL SECURITY PROTECTION

Retirement savings and social security insurance programs address the social safety net. The Employee Provident Fund (EPF) retirement scheme is not compulsory for ICs, meaning GWs are not obligated to contribute. Additionally, digital platforms cannot be required to enforce EPF contributions as employers. The term employer specifically refers to individuals who enter into a service contract or apprenticeship with their employees (Section 2 of the EPFA 1991).

However, the EPFA 1991 allows ICs to contribute voluntarily. Section 43 (8) of the EPFA 1991 provides that ICs are one of the classes of workers encouraged to contribute voluntarily through the method prescribed by the EPF Board, known as the i-Saraan scheme. No minimum contribution rate is set, but the maximum limit is RM100,000 annually (kwsp.gov.my). For 2025, the government provides special incentives for voluntary contributors by contributing 20% of their contributions, not exceeding RM500 per year (Ministry of Finance, 2024).

Despite this special incentive, the response to making EPF contributions among GWs is very low, partly due to the lack of awareness about the importance of saving for retirement preparation (Goh, 2019). The long-term nature of retirement savings likely results in minimal interest in contributions among many GWs. As a result, voluntary schemes frequently fail to guarantee financial security in retirement. Automatic or mandatory contribution systems are deemed more effective in ensuring adequate protection. For e-hailing drivers, a prerequisite strategy can be used to ensure they contribute to the EPF; for example, registration in the EPF scheme is a mandatory requirement to obtain a Public Service Vehicle license. This could be achieved by integrating the role of a digital platform to automatically deduct a portion of the remuneration from weekly fares and channel it into the EPF savings scheme.

GWs are subject to the Self-Employment Social Security Act 2017 (SESSA 2017) including e-hailing drivers and p-hailing riders. The Self-Employment Social Security Scheme (SESS scheme) organized by the Social Security Organisation (SOCSO) protects self-employed insured from work-related disasters, including occupational diseases and accidents while performing work activities. For 2025, the government has provided a matching contribution of 70%, meaning that only 30% needs to be paid by the self-employed to qualify for all the benefits provided under the SOCSO program (Budget 2025).

However, it was revealed that registration for the scheme remains low due to GW's limited awareness of social security benefits (Mohd Nadzri & Nordin, 2023). This raises questions regarding the effectiveness of the scheme in protecting GWs. Although the SESSA 2017 imposes criminal liability on self-employed individuals who fail to contribute and register for this scheme, it is doubtful whether it can effectively urge compliance with this obligation. Other enforcement measures that should be considered, is collaborating with digital platforms to require participation in this insurance scheme before allowing workers to begin.

Another issue that may arise from the SESS schemes for GWs is when they engage in multiple self-employment activities. It is unclear whether GWs need to contribute according to the activities they are involved in or if a single type of contribution is sufficient to cover all their gig activities. According to Section 36 (1) of the SESSA 2017, self-employed insureds having more than one contribution for the same period are entitled to receive only one benefit related to the self-employment disaster they have experienced. This provision can be interpreted to mean that self-employed individuals must contribute based on the specific self-employment activities they engage in; otherwise, there would be no need for multiple types of contributions. Meanwhile, subsection (2) states that if a self-employed insured person is involved in more than one self-employment

activity when they experience a disaster, they are entitled to a higher benefit rate. This provision contradicts subsection (1), as it allows the insured person to receive better benefits regardless of the type of self-employment activity they were engaged in during the work-related disaster.

Apart from their employment social security schemes, no other social safety nets exist specifically designated for GWs. The EISA 2017, defines 'employee' as someone employed with a salary under a service contract; and excludes GWs from its coverage due to their status as ICs.

ACCESS TO DISPUTES RESOLUTION

Access to dispute resolution mechanisms under specific employment laws is crucial for workers (Busby & McDermont, 2020). However, overlaps may occur in certain instances, such as judicial review proceedings, to ensure checks and balances. In Malaysia, access to dispute resolution under labour law, such as the Industrial Court and the Labour Court, depends on an individual's status as an employee. This is because the Labour Court derives its jurisdiction from the EA 1955, while the Industrial Court operates under the IRA 1967. Both statutes explicitly limit their scope to disputes arising within formal employer-employee relationships. As a result, GWs can only pursue legal action through civil courts, such as the Magistrate's Court or the Sessions Court, depending on the amount of claim and the legal grounds, which are limited to breach of contract or tort liability. Given the current landscape in Malaysia, GWs often resort to the media—whether mass media (television, newspapers) or social media—to raise concerns about their working conditions, particularly instances of perceived unfair treatment by digital platforms. Although these efforts garner public attention, their effectiveness remains questionable, as any resolutions offered are often temporary and subject to unilateral revision by platforms based on business needs and operational considerations, such as regarding the issue of low wage rates. Without a registered association or union to represent GWS in dispute resolution, their access to justice is largely compromised (Radzi et al, 2022).

ILO STANDARDS ON GIG WORKERS

The ILO standards are realized through Conventions and Recommendations drafted and approved by the ILO. Most ILO conventions that set labour standards are designed with a broad subject scope because they use the term 'workers'. ILO does not use narrow terms such as 'employee' or 'someone employed under an employment contract'. Observing all core conventions and recommendations regarding employment rights showed that two terms are used interchangeably: 'worker' and 'employed person' (Countouris, 2016). ILO Conventions No. 87 and No. 98 regarding freedom of association apply to all workers irrespective of the type of employment, including home workers, temporary workers, and self-employed persons. Similarly, ILO Convention No. 100 concerning equal pay, and ILO Convention No. 111 on non-discrimination do not stipulate their application based on individuals or employments. However, there are also extensions or limitations according to the appropriateness and objectives of the instruments, such as conventions or recommendations specifically designed to protect the interests of certain segments of workers, like women, the elderly, those working in the plantations, or workers from among the indigenous people (Countouris, (2016). In general, GWs are within the scope of ILO regulations, and detailed investigations are provided as follows.

LEGAL STATUS OF GIG WORKERS

The status of GWs, often classified as ICs, remains a subject of ongoing debate. Given the ILO's role as a global standard-setter, the definition of employment relationships has drawn significant scholarly attention (Countouris, 2016; Liukkunen, 2021). It arises because the definition of work relationships directly influences the applicability of labour standards, outlined in ILO Conventions and Recommendations. Countouris (2016) refers to several examples as a guide to identifying the scope of the application of ILO instruments. ILO Convention No. 95 (ILO Protection of Wages Convention, 1949) states that these provisions apply to all persons who are paid wages or are to be paid wages and defines wages as 'remuneration or income... that is to be paid according to a written or unwritten employment contract...' Article 2 of Convention No. 95 is understood to apply only to workers who enter into an employment contract with their employer.

Furthermore, the usage of the terms 'worker' and 'employed person' in most ILO instruments, particularly those adopted since the early 1980s, gives rise to the assumption that the scope of application of ILO instruments is broad, encompassing workers in traditional or non-traditional employment. At the next stage, the ILO introduced Recommendation No. 198 concerning the Employment Relationship to address the challenges posed by disguised or ambiguous employment arrangements that may conceal the existence of an employment relationship. While not explicitly crafted for genuinely independent contractors, its emphasis on clarifying the employment relationship is relevant to certain segments of the gig economy, particularly where platform workers demonstrate characteristics akin to traditional employment..

Returning to ILO Recommendation No. 198, it is seen as a crucial point in the ILO's assessment of the importance of identifying employment relationships because this concept is central to determining the levels of protection for a worker (De Stefano et al., 2021; ILO Recommendation No. 198). It also arises from the ILO's dissatisfaction with the impact of using the term 'worker' as the scope of application of its instruments, which can be interpreted incompletely and inconsistently by member states, leading to certain classes of workers being neglected (Coutouris (2016). The core objective of this ILO instrument is to ensure that member countries formulate and implement a national policy to conduct periodic reviews and adjust the implementation of their legislation (Paragraph 1, ILO Recommendation No. 198).

The local legislation should incorporate measures such as (a) guiding employers and employees regarding the formation of employment relationships, particularly to distinguish between employees and ICs; (b) curbing concealed employment relationships; (c) ensuring labour standards apply to various types of wage arrangements, including multiple parties; (d) ensuring clarity about who is responsible for providing protection; (e) providing access to effective dispute resolution; and (f) ensuring effective enforcement and interpretation of the law (Paragraph 4, ILO Recommendation No. 198). National policies are advised to use specific approaches in determining employment relationships to protect the concerned workers, such as not interfering in genuine commercial contracts while ensuring that individuals in employment relationships are still adequately protected (Paragraph 7, ILO Recommendation No. 198).

ILO Recommendation No. 198 (Paragraph 9) outlines the key factors for determining the work relationship, emphasizing the characteristics of the work and how wages are paid. When considering wage payment, factors to determine include whether wages are paid on a regular schedule, whether the income is the worker's primary source of earnings, and whether the worker is entitled to weekly rest and annual leave. These two aspects can also be seen as aligned with the

broadier indicators highlighted in the ILO instrument, specifically by examining the degree of the worker's subordination and dependence on the employer (Paragraph 12).

The Committee of Experts on the Application of Conventions and Recommendations (CEACR), the ILO's supervisory body, points out that the current indicators in ILO Recommendation No. 198 may no longer be appropriate for determining employment relationships in the future. Member States should consider developing new criteria and replacing the existing ones. This suggestion aligns with the provisions in Paragraph 11(a) and Paragraph 11(b) of ILO Recommendation No. 198, which require member states to allow different methods for determining employment relationships. Paragraph 11(b) states that national laws may establish a presumption of a working relationship depending on relevant indicators.

ILO Recommendation No. 198 addresses the issue of enforcement, which is crucial in determining whether GWs are considered employees or ICs. One of the recommendations is to establish an effective monitoring system and remove incentives that encourage undeclared employment relationships. This can be achieved by linking the enforcement of labor laws with the implementation of tax systems and social safety nets (De Stefano et al., 2021).

Despite the positive developments regarding the ILO's approach in formulating its labour standards for segments of workers outside the traditional scope, such as gig work, the practical implications of instruments such as ILO Recommendation No. 198 remain limited in scope and clarity when applied to platform-based labour. It lacks clarity regarding the workers affected by employment relationship misclassification, particularly those in sectors with higher employment rates and those vulnerable to social security scheme fraud, such as GWs (De Stefano et al., 2021). ILO Recommendation No. 198 also does not suggest that member countries recognize workers in the intermediate category (semi-subordinate) (De Stefano et al., 2021; Countouris, 2016). Undoubtedly, one of the heated debates surrounding the status of GWs is whether they can be classified as workers in the intermediate category (Peetz, 2023; Fischer, 2024 Tan, 2021). This approach reveals the ILO's focus on a dual-model employment relationship and neglect of the employer's identity as a major concern in gig worker classification. On top of that, while the Recommendation promotes a purposive approach to determining employment relationships, its non-binding nature and lack of explicit reference to GWs mean that its effectiveness is highly dependent on national legal systems for implementation. In assessing the extent to which the Malaysian employment legal framework adopts ILO Recommendation No. 198, it should first be clarified that the instrument under discussion is not a convention. It is instead a recommendation that does not need to be ratified and certainly does not have a binding effect on member countries.

The Malaysian Ministry of Human Resources has outlined the 2021-2025 Strategic Plan (policy document), and one of the strategies crafted to achieve the strategic direction theme regarding labour enforcement and standards is to ensure that labour laws are relevant to current and future needs (JTKSM, 2021). Current developments regarding the gig worker bills, which were announced on February 19, 2025, indicate the Malaysian government's positive efforts to improve labour standards across various types of employment in Malaysia.

Moreover, concerning the aspect of ILO Recommendation No. 198 on methods for ascertaining employment relationships, it has already been accepted via adjudication and included in legislative form with the enactment of Section 101C of the EA1955. The specified indications, on job characteristics, align with the common law tests used by courts to establish employment relationships. Simultaneously, the courts do not disregard wage payment systems evidence when evaluating the contractual parties' true relationship. These methods include prioritizing case facts, which are recognized in the courts (*Loh Guet Ching's case*; *Hoh Kiang Ngan's case* (1996).

Nonetheless, a pertinent concern arises about the consistency of judicial institutions in implementing the core principles and the specified indicators. To what degree and on what basis may the court set aside specific contractual terms agreed upon by the parties? This matter remains unresolved, as evidenced by the recent High Court ruling in the judicial review proceedings of *Loh Guet Ching*. The Court determined that the agreement between the claimant and the Grab digital platform constitutes a commercial contract, with one of the Court's considerations being the designation of 'independent contractor' within the contract. To what degree does the High Court effectively reconcile genuine economic interests with the social rights of workers as safeguarded by employment legislation, following ILO Recommendation No. 198?

Meanwhile, the recommendations of the Global Commission on the Future of Work (2019) following the ILO Centenary Declaration on the Future of Work 2019 demonstrate the ILO's ongoing efforts to address the inequality of protection among various segments of workers due to the changes affecting the labour sector worldwide. One of the proposals is to establish universal labour guarantees. Laws or collective agreements must protect all workers equally. Despite efforts to recognize GWs' rights, the ILO faces challenges in implementation, as ratification arguably remains key to enforcing labour standards.

WAGES

ILO instruments regarding the establishment of minimum wages consist of ILO Convention No. 131 and are supported by ILO Recommendation No. 135. The main objective of ILO Convention No. 131 is for member countries to establish a minimum wage setting system for all workers with appropriate employment terms. The system must be adjustable periodically, and the methods for setting and adjusting the minimum wage must be made through negotiations with the employers and workers' representatives. The acceptable minimum wage system is either a single rate or different rates according to the group of workers concerned. Malaysia has ratified ILO Convention No. 131 and has taken steps to implement the provisions of this instrument along with its supporting instruments through the enactment and enforcement of NWCCA 2011 and the Minimum Wage Orders.

Although ILO Convention No. 131 aims to establish minimum wage systems that cover 'all groups of wage earners whose terms of employment are such that coverage would be appropriate,' the application of this standard to GWs remains limited. The phrase 'terms of employment are such that coverage would be appropriate' is not strictly defined within the Convention, but its interpretative application allows member states to exercise discretion in determining which categories of workers fall within the scope of national minimum wage laws. This has led to the frequent exclusion of non-standard and informally engaged workers, including many GWs, who are often classified as independent contractors or self-employed (International Labour Office, Minimum wage policy guide: A summary). These classifications typically fall outside traditional employment relationships, which many ILO instruments, including Convention No. 131, continue to prioritize. As such, although the Convention advocates broad coverage, in practice, minimum wage protections are unevenly extended, particularly to those in atypical or digitally mediated work arrangements. In the context of Malaysia, the implementation scope of the NWCCA 2011 and the Minimum Wage Orders is determined by the EA 1955. Due to this, GWs, typically categorized as ICs, are not included in the national minimum wage regulations.

SOCIAL SECURITY PROTECTION

The ILO has developed several instruments regarding the social safety net for workers. The minimum standards for social security protection are provided in ILO Convention No. 102, which lists nine types of benefits such as health care, sickness, retirement, family, disability, and survivors. Meanwhile, the ILO Convention No. 168 protects against unemployment. ILO Convention No. 128 and ILO Recommendation No. 131 are ILO instruments that regulate standards related to pension schemes. The government of a country that ratifies ILO Convention No. 102 must establish a pension scheme that covers at least 50 percent of all workers. Meanwhile, ILO Convention No. 128 extends to all workers, including apprentices. ILO Conventions No. 102 and No. 128 do not set broad standards for pension schemes that include GWs by using the term ‘workers’ as a group subject to protection. ILO Recommendation 131, however, promotes governments to extend social security protection to casual wage workers and all working individuals, which is understood to include workers in the GE.

Voluntary retirement savings and self-employment insurance systems have been implemented to improve the financial security and social safety of GWs. However, due to a lack of understanding about the necessity of retirement savings and employment-related insurance, as well as the voluntary nature of contributions and a lack of enforcement, these measures have been mostly ineffective in providing a financially secure and sustainable retirement for GWs.

ILO Conventions No. 102, No. 128, and No. 168, which each set standards regarding social security networks protecting against disasters and occupational diseases, disability due to health issues or non-work-related accidents, old age, and job loss, all limit their scope to workers in the traditional wage employment segment. However, the inclusion of similar rights has been expanded by Recommendation No. 131 which promotes protection across different types of employment. Therefore, it can be concluded that the ILO acknowledges the social protection gap for GWs. However, it must recognize the internal challenges that individual governments face in establishing a more inclusive social protection system.

DISPUTES RESOLUTION

Standards on the right to access justice are distinctly included in several ILO Conventions that delineate work rights, linking the purview of judicial systems with the corresponding rights they regulate. Article 27 of ILO Convention No. 168 outlines a legislative framework to regulate, enforce, and address issues related to social security, with a particular focus on unemployment benefits. Governments must guarantee individuals may contest benefit-related matters before the administering agency and appeal to an impartial body. Article 8 of ILO Convention No. 158 similarly confers to workers the right to challenge unfair dismissals before impartial entities, such as courts, labour tribunals, or arbitration panels.

Nevertheless, a considerable disparity persists since most ILO instruments fail to extend these rights to GWs, categorized as ICs. The ILO recognizes this constraint in Recommendation No. 204, which emphasizes the need to have access to justice for those in the non formal sector, including GWs. Rectifying this deficiency is essential for protecting GWs’ rights in dynamic labour markets. Malaysia has yet to provide exclusive dispute mechanisms for GWs to opt in when they encounter issues with their gig activities.

COMPARATIVE ANALYSIS

The ILO has gradually devised instruments to resolve the challenges faced by freelance workers, who are confronted with ambiguous employment contracts, in recognition of the rights deficit. It is acknowledged that ILO instruments have adopted the dual status model of workers, namely employees and ICs, although the term 'worker' was used in most instruments adopted in the early stages of its establishment. But at the subsequent stage, namely post-1980s, the ILO began to find that the term 'worker' was inadequate to ensure that member countries, especially those that ratified ILO conventions, extended rights standards to workers in employment beyond traditional arrangements.

A significant advancement in this area is ILO Recommendation No. 198, which offers guidelines to prevent employer firms from circumventing legal obligations through unclear employment arrangements. Nonetheless, this suggestion lacks binding authority and fails to specifically tackle gig employment or semi-subordinate workers, resulting in notable deficiencies in protection. The *Global Commission on the Future of Work*, formed in response to the *ILO Centenary Declaration* (2019), emphasized the necessity for universal labour guarantees to tackle issues related to employment diversity and rights deficits. Moreover, the ILO's serious attention to job diversity and the deficit of workers' rights for affected worker segments is evident through the recommendations put forth by the Global Commission on the Future of Work following the *ILO's Centenary Declaration on the Future of Work* in 2019 to establish universal labour guarantees.

In Malaysia, even though the legal response to contract workers' rights has been delayed, it has not been entirely absent. The EA 1955 has been revised to include Section 101C, which introduces the presumption rule and specified factors for determining employment status, in line with ILO Recommendation No. 168. Concerning minimum wage protection and dispute resolution, Malaysia has not yet achieved full alignment with international standards, as the protections for GWs remain ambiguous. Reflecting the principles of ILO Recommendation No. 131, Malaysia has implemented voluntary retirement savings and self-employment insurance schemes aimed at ICs, including those in the GE. Nonetheless, insufficient awareness and ineffective enforcement measures have compromised their efficacy, leading to fears about not providing social security for GWs.

CONCLUSION

The emergence of the GE poses enormous issues not just to individual nations, but also to the ILO. The ILO has been criticized for its perceived inability to address the complexities of evolving employment regulations, on digital-based freelance work involving multiple parties and contractual arrangements. However, the organization is transforming its strategies to preserve its credibility as a worldwide labour advocacy organization. Malaysia, like other countries, recognizes gig work as an inevitable economic driver and must continue to take measures to safeguard workers' rights in this sector. The Malaysian government's plan to introduce the new Bill for GWS in mid-2025 is a welcome move. This Bill will address social security, wages, and dispute resolution mechanisms for GWs. Adherence to ILO standards and strategic partnership with the organization are critical for aligning Malaysia with global best practices and ensuring that labour rights contribute to long-term economic success. Hence, this study contributes to strategies for

Malaysian regulatory bodies and institutions to enhance gig worker inclusion while preserving industry flexibility for sustained competitiveness and growth.

ACKNOWLEDGEMENT

The authors express their gratitude to the management of the Faculty of Law, Universiti Kebangsaan Malaysia, and Open University Malaysia for their support of this research...

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