

Legal Landscapes for Atypical Employees in Malaysia: Intern and Gig Worker Edition

(Lanskap Perundangan bagi Pekerja Atipikal di Malaysia: Edisi Pelatih dan Pekerja Gig)

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ABSTRAK

Sifat pekerjaan yang terus berkembang menimbulkan persoalan penting mengenai perlindungan pekerja dalam situasi di mana model majikan-pekerja tradisional tidak lagi terpakai. Di Malaysia, peningkatan pekerjaan tidak standard seperti latihan industri dan pekerjaan gig mencerminkan trend global, namun undang-undang buruh negara belum bergerak seiring dengan perubahan ini. Pelatih industri sering ditempatkan dalam jawatan tanpa bayaran atau dibayar rendah walaupun beban kerja yang tinggi, manakala pekerja gig pula berhadapan dengan ketidakstabilan kerja, pendapatan yang tidak mencukupi serta akses terhad kepada perlindungan sosial. Kajian ini menilai kelemahan undang-undang buruh Malaysia dalam melindungi pekerja tidak standard dengan menggunakan pendekatan analisis undang-undang normatif. Kajian ini juga membandingkan amalan Malaysia dengan pendekatan antarabangsa untuk mencadangkan langkah dasar yang lebih inklusif. Dapatan utama menunjukkan tiga isu utama: (1) perlindungan dan keistimewaan pekerja atipikal tidak konsisten di bawah undang-undang sedia ada; (2) penguatkuasaan piawaian latihan industri lemah dan tidak seragam; dan (3) peraturan berkaitan ekonomi gig masih terpecah-pecah dan tidak mencukupi dari sudut keselamatan sosial. Kajian ini mencadangkan beberapa pembaharuan penting termasuk pemberian elaun latihan industri secara mandatori, takrifan perundangan yang jelas mengenai status pekerja, serta penggubalan undang-undang khusus untuk sektor ekonomi gig. Pembentukan semula kerangka perundangan yang lebih adil dan inklusif adalah penting bagi memastikan sistem pekerjaan yang berdaya tahan dan saksama di Malaysia.

Kata kunci: Pekerja atipikal, Latihan industri, Pekerja gig, Perlindungan undang-undang, Buruh paksa.

ABSTRACT

The evolving nature of employment raises critical questions regarding worker protections in contexts where the traditional employer-employee model no longer applies. In Malaysia, the rise of non-standard employment including internships and gig workers follow a global trend, yet Malaysia's labor laws have not kept pace with these shifts. Many interns are placed in unpaid or low-paying positions with demanding workloads, raising questions about whether such practices align with International Labour Organization (ILO) standards on fair labor conditions. Likewise, gig workers frequently encounter job instability, insufficient wages, and limited access to essential benefits, operating within a regulatory framework that offers little formal protection. This paper critically examines the insufficiency of Malaysia's current labour laws in addressing the vulnerabilities faced by these non-standard workers. Employing a normative legal analysis, the study investigates the structural gaps in protections under the Employment Act 1955 and related frameworks. Comparative insights are drawn from international best practices to identify more inclusive policy options. Key findings reveal three urgent concerns: (1) existing laws do not provide consistent protections or entitlements for atypical workers; (2) enforcement of labour standards for internships remains weak and inconsistent; and (3) gig economy regulations are fragmented and fail to ensure adequate social security. The paper proposes reforms including mandatory internship allowances, clearer statutory definitions of worker status, and tailored gig economy legislation to enhance fairness and equity. A reimagined legal framework that safeguards atypical workers is essential to achieving a resilient and just employment system in Malaysia.

Keywords: *Atypical employees, Internships, Gig workers, Legal protections, Forced labour.*

INTRODUCTION

We need to understand that the world of work is changing faster than ever, and it is not just about new technologies but also how we work and who is doing the work. Globalization, cultural shifts, and rapid advancements in technology are all shaping a new landscape, leaving the traditional 9-to-5 job in the rearview mirror (Forsdick 2024). A new type of work namely atypical employment in which does not fit the usual mold of full-time, permanent positions (Hesketh, 2021). Think of part-time roles, temporary contracts, freelancing, or gig workers. These types of employment offer greater flexibility compared to traditional employment but they also come with trade-offs such as less job security and fewer benefits (Lesonsky 2025). For many, though, the perks of controlling their work schedule and achieving a better work-life balance outweigh the downsides.

The shift towards these non-traditional roles began in the late 20th century, especially in the United States and Europe, shortly after World War II (Ogura, 2005). Fast forward to today, and this trend is taking root globally, Malaysia included. The push for organizational flexibility, driven by a fast-paced global market, has further accelerated the change (ISO - the Changing Nature of Work, 2018). As remote work and contract positions replace the traditional office job, workers must adapt quickly, staying on top of evolving skills to remain competitive (Lazarova et al., 2022).

In Europe, there's been a lot of research on the challenges and protections for atypical workers (Eurofound 2017), but the conversation is just beginning in Malaysia. With more workers embracing these flexible roles, the need for stronger protections and fair treatment has never been greater. How can governments and policymakers step up to ensure workers

have the security, benefits, and support they need in this new world of work?

ISSUE

The issue at hand is the glaring gap in legal protections for workers engaged in atypical employment in Malaysia, such as gig workers, freelancers, and interns. Despite the increasing prevalence of these non-traditional work arrangements, the Employment Act of 1955 offers little to no legal safeguards for those involved in them, creating significant vulnerabilities for individuals working under these conditions and leaving them open to exploitation and abuse (Wee 2023).

The introduction of the 1:3 internship policy by the Human Resources Ministry, through Talent Corporation Malaysia Bhd, represents a significant step toward increasing internship opportunities for local students. By requiring companies to provide up to three internship placements for every expatriate they hire, the policy aims to benefit 100,000 students from higher education institutions nationwide (FMT 2025). This initiative aligns with the Ministry of Higher Education's (MOHE) mandate, which requires university students in Malaysia to complete internships as part of their academic programs (Wan Usamah 2023).

These internships aim to provide students with practical experience and prepare them for future careers (Tucker 2024). However, the lack of protection under the Employment Act leaves interns exposed to exploitative practices, such as being asked to work without pay, endure excessive hours, and face unclear job expectations (Wan Usamah 2023). As a result, many interns find themselves in situations that undermine the very purpose of their experience, which should be to help them develop professionally (Tucker 2024).

Similarly, gig workers who are increasingly part of the workforce in Malaysia also encounter significant challenges. These workers typically engage in short-term, flexible contracts offered through online platforms (Harun et al. 2020). While gig work promises flexibility, it often comes with little to no job security, limited benefits, and a complete absence of legal protections. Without the safeguards enjoyed by standard employees, gig workers are vulnerable to exploitation and lack the means to address any unfair treatment they may face (Wee 2023).

Together, these issues highlight deeper, systemic problems within the framework of atypical employment. The lack of safeguards places workers at a significant disadvantage, depriving them of basic rights and benefits that are standard for traditional employees. As the nature of work continues to evolve, it becomes increasingly urgent to provide legal recognition and protection for these workers, ensuring fair treatment and adequate safeguards in an ever-changing labor market.

METHODOLOGY

This research is a normative juridical study in which there is a legal vacuum regarding the existence of work relationship arrangements and legal protection of atypical workers. The legal material used is primary legal material, namely the laws and regulations related to this problem and secondary material in the form of journals and books. The legal materials are collected through literature study. The approach is carried out through the statutory and the legal concept approach. The analysis is carried out qualitatively.

CONCEPTUAL FRAMEWORKS

Atypical Employment

In the realm of labor studies, the terms *atypical* or *non-standard* employment are frequently used, alongside their counterpart, typical or standard employment. While these categories are commonly understood in industrial practice, there is no formal, universally accepted definition or classification of these employment types within academic literature (Nazruzila 2014). Instead, these terms generally serve to highlight the distinguishing features that define each employment arrangement.

Standard employment refers to the traditional model of work, often characterized by a stable employer-employee relationship. This typically involves permanent positions, predictable working hours, a broad array of statutory protections, and a high level of job security. It embodies the conventional nine-to-five workday, with a clear structure and associated benefits (Nazruzila 2014).

In contrast, atypical employment encompasses a range of work arrangements that depart from this traditional framework. These include part-time roles, freelance work, temporary contracts, and other forms of flexible employment. While atypical employment can offer greater flexibility and adaptability to workers, it often lacks the same level of job security, stability, and legal protections afforded by standard employment.¹

Contract Of Service and Contract For Service

In Malaysia, the distinction between a contract of service and a contract for service plays a crucial role in determining an individual's employment status and the legal protections they are entitled to. According to the English common law, employees must be hired under a contract of service to be covered by the employment law, including the protections outlined in the Employment Act 1955 (EA 1955).²

This contract of service is associated with certain rights and benefits, which are afforded to employees under the EA 1955.

This distinction has been the subject of judicial scrutiny. In the Federal Court decision of *Hoh Kiang Ngan v Mahkamah Perusahaan Malaysia & Anor [1996] 4 CLJ 687*, Gopal Sri Ram JCA emphasized the relevance of the Control Test in assessing whether a contract is one of service. According to his Lordship, the more control an employer has over the manner in which work is performed by the individual, the more likely it is that the individual is an employee. However, His Lordship further clarified that this is not the sole criterion; the court must also consider the terms of the contract to determine the true nature of the relationship.

Additionally, the courts also apply the Integration Test, introduced by Lord Denning in *Stevenson, Jordan & Harrison Ltd v MacDonald & Evans [1952] 1 TLR 101*, where the focus is on whether the individual's work is integral to the business. If the individual is part and parcel of the organization, they are more likely to be classified as an employee, even in the absence of detailed control.

In addition to the EA 1955, other relevant employment laws include the Industrial Relations Act 1967 (Act 177), the Employees Provident Fund Act 1991 (Act 452), and the Employees' Social Security Act 1969 (Act 4). These laws provide broader protections for employees who are under a contract of service. However, those

who work under a contract for service, such as independent or self-employed contractors, are not covered by the same employment protections.³

The key features of a contract of service typically include full-time employment, a continuous and indefinite period of work, performance of duties at the employer's place of business, and being under the close direction of the employer. These characteristics align with what is traditionally considered "standard employment," where the employee has a clear and ongoing relationship with the employer. However, with the increasing diversification of employment relationships, especially with the rise of atypical or non-standard forms of work, determining whether a worker qualifies as an employee under a contract of service has become more complex (Wenjie & Co 2024).

Courts in Malaysia use common law tests to determine the employment status of workers in disputes, particularly in the Industrial Courts. Given the variety of work arrangements, each case requires a thorough analysis of the facts and circumstances to fairly determine whether the worker should be classified as an employee under a contract of service or an independent contractor under a contract for service. The outcome of these cases can have significant cost implications for both employers and employees, as they directly impact the rights and benefits to which workers are entitled.

Internships

Internships definition set by the Ministry of Higher Education (MOHE) are defined as the placement of students in an organisation to undergo supervised practical training in an industry of their choice, for a fixed duration of time during the pursuit of their certificate, diploma, or bachelors' degree

(MOHE 2010). Lam and Ching (2007) illustrate that an internship is like a bridge between the academic learning process and the reality of the working environment. Meanwhile, according to Beggs, Ross, and Goodwin (2008) internship programs offer students valuable hands-on experience, allowing them to engage in real-world professional tasks. These programs serve as

a bridge that enables students to apply theoretical knowledge in practical job settings. In Malaysia, most public and private universities mandate internships for undergraduates to ensure they gain relevant work experience, enhance their academic learning through application, and prepare for future career opportunities. Typically, universities and colleges allocate a set number of credit hours for internships as part of a student's academic curriculum.

Historically, the terms "internship" and "apprenticeship" have often been used interchangeably. However, distinguishing between the two is crucial, as they entail different legal implications.⁴ In the Malaysian context, interns are not legally protected under any specific statutory provisions or legislation, thereby limiting their legal entitlements. Conversely, apprenticeships are explicitly recognized under the Employment Act 1955, which regulates the employer-employee relationship in Malaysia (Hamdan & Cheong 2024).

Pursuant to the Employment Act 1955, an "apprenticeship contract" is defined as:

"a written contract entered into by a person with an employer who undertakes to employ the person and train or have him trained systematically for a trade for a specified period which shall be for a minimum period of six months and a maximum period of twenty four months in the course of which the apprentice is bound to work in the employer's service".⁵

From this definition, it is evident that an apprenticeship contract constitutes a contract of service under the Employment Act 1955. This definition specifies a minimum duration of six months and a maximum duration of twenty-four months for the apprenticeship, establishing the statutory framework for apprenticeships. This limitation excludes internships or placements that are shorter than six months from the legal protections provided under the Employment Act 1955. Consequently,

many interns working for shorter periods, typically under six months, may find themselves in a legally precarious position, as they are not covered by the statutory safeguards of the Act. This results in a lack of legal recourse in cases of grievances or exploitation in the workplace.

Gig Worker

Harun et al. (2020) defined gig workers as individuals who either work through digital applications or as independent workers, freelancers or part-time employees with flexible work schedules and workspaces. Gig workers are also classified according to the occupation category. They can be freelancers (tutors, tuition teachers, photographers, videographers and tourist guides), have a technology-based occupation (such as web designers and software developers), drivers (Grab, MyCar, etc.) or riders (Grabfood, Foodpanda, etc). The gig economy has become a norm for Malaysia's employment landscape.

The International Labour Organization (ILO) defines gig workers as workers who often labour independently, in isolation, over geographically expansive areas, and in direct competition with one another, hence are often classified as independent contractors (Johnston & Land-Kazlauskas 2019). Asia-Pacific Economic Cooperation (APEC), on the other hand, defines gig workers by these characteristics—a high degree of autonomy; payment by task, assignment, or sales; and short-term, temporary, and ondemand engagements.⁶

Due to the COVID-19 pandemic, many previously unemployed workers adopted gig jobs to earn short-term income. The trend to work in this sector mostly emerged among youngsters, particularly those who left school or university students who needed to earn additional income from part-time careers. Gig work also became popular among white-collar workers who

switched from full-time employment to part-time since they could choose their work hours while managing their daily lives with family and friends (MyDigital 2024). Their work is more towards on-demand jobs such as freelancers, independent contractors, project-based workers and part-timers.

EMIR Research in 2020 highlighted that it was estimated that four million people (representing 26 percent of Malaysia's workforce) were in the gig economy and this number is expected to sharply increase in the next few years (Yeo 2022). Research by the University of Oxford and Zurich Insurance Group found that 38 percent of Malaysians are considering joining the gig economy in 2023 (Pang, 2022). Although this growing trend provides huge opportunities for Malaysians to earn income with flexible schedules, it does come with issues and challenges that must be addressed.

UNDERSTANDING THE LEGAL CHALLENGES FACED BY INTERN AND GIG WORKER EMPLOYEES IN MALAYSIA

Gig worker and internship potential are rising as Malaysia progresses toward a more dynamic workforce. However, there are a number of flaws in the current legislative framework that governs these types of employment, exposing those involved in danger. This section will focus on the serious gaps in legislation and regulation that affect interns and gig workers.

The lack of proper protections for these two atypical employment roles serves as a major flaw in the legal system. The rights of those working in atypical employment are not adequately protected by Malaysian labor law, which only is primarily focused on full-time employees. Due to the absence of complete protection, these workers are vulnerable to exploitation and frequently endure working conditions

that would be deemed intolerable for their full-time colleagues.

Legal Protections for Interns in Malaysia

In Malaysia, the legal status of interns remains unclear, with little regulatory oversight to protect their rights. The Employment Act 1955, which governs employment relationships in Malaysia, does not extend its protections to interns, as they are not officially considered employees under the law (theInterna 2024). As a result, interns are excluded from key protections such as minimum wage, paid leave, and health benefits.

While the Employment Act 1955 requires a minimum of six months for an apprenticeship to be legally defined as such and thus covered under the protections of the Act, university internships are often shorter, typically ranging from a few weeks to around three to four months. This shorter duration of internships means that university students undertaking these placements are not classified as apprentices under the Act and do not receive the same legal protections afforded to those on apprenticeship contracts (Bakar 2019).

As a result, university interns in Malaysia, despite being in work environments and performing tasks that contribute to their academic qualifications, remain outside the scope of the Employment Act 1955's safeguards. This leaves them vulnerable to potential exploitation, workplace grievances, or unfair treatment, as they are not legally considered apprentices or employees under the Act. Furthermore, since the university internship durations are generally set based on academic requirements and not aligned with the six-month minimum threshold for apprenticeships, students do not benefit from statutory protections like those

granted to individuals under apprenticeship contracts.

This mismatch between the duration of university internships and the statutory requirements for apprenticeships highlights the gap in legal protection for students engaged in these placements. Consequently, students may not have recourse for issues such as non-payment, poor working conditions, or harassment, as they do not fall under the scope of the Employment Act 1955, unlike those in formal apprenticeship programs.

Despite the growing recognition of internships as an important part of higher education, the legal protections for interns in Malaysia remain minimal. While the Ministry of Higher Education (MOHE) has issued guidelines recommending that companies provide stipends to interns, these guidelines are non-binding and do not carry the force of law (Morden 2023). The absence of enforceable regulations has resulted in an environment where employers are not legally obligated to compensate interns or ensure fair treatment, creating significant gaps in the legal framework.

The Financial And Legal Disparities For Interns In Malaysia

In general, the Employment Act of 1955 contains no regulations pertaining to practical training. It is obvious that a student undergoing practical training will not be afforded the same degree of protection as an employee. The training provider's humanitarian nature and discretion govern the payment of allowances, maximum working hours, and other issues pertaining to practical training.

When an individual is not covered by the Employment Act 1955, they are excluded from receiving the minimum wage outlined in the Minimum Wage Order 2024⁷, which sets the threshold at RM1,700 per month. This increase, announced by

Prime Minister Datuk Seri Anwar Ibrahim during the tabling of the 2025 Malaysian Budget last October, is part of the government's broader effort to ensure that workers earn meaningful wages that allow for a more comfortable standard of living (Malaysiakini 2024). However, despite this positive development, interns remain outside the scope of these protections, leaving them without access to these vital benefits.

Starting from September 1, 2019, the government agreed to pay practical training students in ministries, departments, and government agencies RM5 per hour. At this rate, a government intern will receive an allowance of up to RM900 per month for a maximum period of 90 days, compared to RM300 per month previously (Ram 2019). However, this minimum allowance rate does not apply to private companies. For both the government and private sectors, students will not be paid overtime (OT) allowances.

Internship students also do not receive other protections under the Employment Act 1995, such as those related to rest leave and maximum working hours. According to the Public Service Department (JPA), internship students are not given rest leave like other employees. They can apply for permission from the company to take leave, but they will not be paid any allowance for those leave days or required to make up for the leave (Jabatan Perkhidmatan Awam (JPA) 2019). At the same time, since an intern is not an 'employee', they do not need to give a one-month notice if they wish to stop their internship.

The widespread practice of unpaid or underpaid internships. Interns are often required to work full-time hours but are not compensated for their labor, particularly in fields such as media, business, and the arts. Even when some interns are offered stipends, these payments are often

insufficient to cover basic living expenses, leaving interns in precarious financial situations. Moreover, the lack of legal guidelines regarding internship compensation and working conditions has led to many employers taking advantage of interns, assigning them menial tasks that do not contribute to their professional development.

There was a notable increase in interns pursuing legal action against companies for unpaid internships in 2014. In Europe, including the UK, and the United States, unpaid internships were deemed unlawful (Tucker 2014). However, in Malaysia, no legislation explicitly declares unpaid internships illegal (Nicholas 2021). While many universities now offer paid internship programs across various fields, the compensation provided is often insufficient to cover basic living expenses (Chai, 2014).

Recent discourse surrounding unpaid internships in Malaysia was reignited following statements from Parti Sosialis Malaysia (PSM) Youth Chief Arveent Kathirtchelvan. He emphasized the financial strain on interns, who must bear costs related to transportation, accommodation, food, and other expenses during their training period. Arveent argued that the work performed by interns generates tangible benefits for their employers, making it inequitable to exclude them from receiving compensation. He proposed that interns be guaranteed at least the minimum wage, framing it as a matter of social justice and societal debt repayment (Noorshahrizam 2023).

Conversely, the Malaysian Employers Federation (MEF) has opposed mandatory allowances for interns, warning that such measures could deter private sector participation in internship programs. MEF President Datuk Syed Hussain Syed Husman suggested that instead of enforcing payment requirements, the government

should provide incentives to employers to offset the financial burden (Morden 2023). He further proposed making internships a mandatory requirement for undergraduate programs to ensure students gain workplace exposure.

Internships: Unpaid Labor And Ethical Concerns

Internships are integral to skill development and exposure to professional environments. However, interns frequently face exploitation, as many companies view them as sources of cheap labor rather than learners requiring mentorship (Chai 2014).

The need for ethical governance in internships was echoed by Haikal Mustafa, a lecturer at Universiti Teknologi MARA, who shared a disheartening experience involving his student. The intern was terminated abruptly without mediation or proper justification, highlighting the vulnerability of unpaid interns. Mustafa pointed out that companies should not expect diploma-level interns to perform complex troubleshooting tasks that fall outside their scope of learning and emphasized the need for fair treatment.⁸

Following the post, Khalizan Halid, Executive Director at Codegen Technologies Sdn Bhd, criticized this practice, stating that companies often undervalue the work interns perform. He noted that tasks such as designing tests, executing them, and analyzing results require craftsmanship and professional expertise, yet interns are expected to undertake these responsibilities without fair compensation. This perception of interns as cheap labor undermines their contributions and devalues the internship experience.

Furthermore, the absence of mandated compensation exacerbates this issue, with many interns struggling to cover basic costs such as transportation and accommodation while fulfilling professional obligations. As Parti Sosialis

Malaysia (PSM) Youth Chief Arveent Kathirtchelvan emphasized, it is unfair for students to bear these expenses while their work benefits the organization. He argued for a mandated minimum wage for interns, paralleling protections for other categories of workers (Noorshahrizam 2023).

Legal Protections for Gig Workers in Malaysia

Gig work, a rapidly expanding sector within the modern labor market, involves short-term, task-based employment arrangements that are primarily facilitated through digital platforms. In Malaysia, gig workers are typically engaged in services such as ride-hailing, food delivery, and logistics through companies like Grab, Foodpanda, and Lalamove. These workers are often referred to as "independent contractors" rather than employees, and as a result, their legal rights and protections differ significantly from those of traditional employees.

A significant case that best illustrates that gig workers are considered as independent contractors rather than employees can be seen in the case of ***Loh Guet Ching v. Menteri Sumber Manusia & Ors [2021]***.⁹ The High Court in this case upheld a decision of the Minister of Human Resources that declined to refer to the Industrial Court a claim filed by a Grabcar driver to challenge her dismissal from the Company. The High Court's decision represents a landmark ruling on the employment status of Grabcar drivers in this country. By the decision, it appears that a Grabcar driver cannot be considered an employee (or a "workman") under Malaysian employment law.

However if we look at the Integration Test as established in ***Stevenson, Jordan & Harrison Ltd v MacDonald & Evans [1952]*** which recognised by Malaysian courts, provides a persuasive foundation for reclassifying gig

workers as employees rather than independent contractors. Under this test, if a worker's role is integral to the business, not merely an accessory, they may be deemed an employee. In the context of the gig economy, Grab drivers, Foodpanda riders, and other platform-based workers are the operational backbone of the business. These platforms cannot function without the continuous service of such workers, who deliver the core value to consumers. Their work is neither peripheral nor optional but central to the business model. Therefore, the economic and operational integration of gig workers into the platform ecosystem justifies their recognition as employees under the Employment Act 1955. By incorporating the Integration Test into statutory reform or judicial interpretation, Malaysia can more accurately reflect the real working conditions in the platform economy and extend essential protections to these vulnerable workers.

The legal framework surrounding gig work in Malaysia is still evolving, and while gig workers are afforded some degree of flexibility, they remain largely vulnerable to exploitation due to the lack of clear and comprehensive regulations governing their work conditions. As gig work has grown in importance, particularly among young workers and those seeking supplementary income, the government has been pushed to address the legal gaps that leave gig workers vulnerable. However, despite some positive steps in expanding protections for gig workers, there remains a significant void in terms of comprehensive labor rights and benefits for workers in this sector.

Challenges Faced by Gig Workers in Malaysia

The various problems faced by gig workers in Malaysia arise from the mere fact of being independent contractors, which can have dire consequences in terms of

available legal rights and protections. The primary challenges include:

1. *Lack of Job Security and Income Stability*

One of the most serious challenges that gig workers face is income uncertainty and instability (SHCO 2024). Most gig workers are paid per task or delivery, their earnings quite literally fluctuate depending on how many jobs or deliveries they complete. Gig workers can have their income hit very badly during times of low demand and adverse weather (F. Lu et al. 2024). During those times, they do not have any sort of guaranteed minimum wage or income floor; hence, financial instability makes it hard for gig workers to plan for the long term or manage their personal finances by any means (F. Lu et al. 2024).

2. *Low Wages and Unpredictable Working Conditions*

In addition to income instability, many gig workers receive low wages that do not always reflect the time, effort, and expenses involved in their work. This is particularly evident in sectors such as food delivery, where workers must cover their own vehicle and fuel costs without reimbursement (SHCO 2024). Their earnings are further affected by fluctuating demand and platform fees, reducing their overall take-home pay. On top of that, gig workers often endure physically demanding conditions, such as navigating heavy traffic and working long hours in challenging weather, to sustain their livelihoods.

3. *Unclear Legal Status and Lack of Recourse*

Another pressing issue is the ambiguity surrounding the legal status of gig workers. While they are often treated as independent contractors, this classification can lead to disputes over whether they should be entitled to employee protections (MyDIGITAL 2024). For instance, gig workers have limited recourse to legal protections in cases of unfair dismissal, wage disputes, or unsafe working conditions. Furthermore, gig workers lack access to the legal framework that governs employee grievances, making it difficult for them to challenge unfair practices or seek legal redress.

4. *Denial of Employee Benefits*

Since they are classified as independent contractors, gig workers do not qualify for basic benefits and protections that are routinely afforded to any other workers under the Employment Act 1955. These include rights for paid annual leave, public holiday, sick leave, maternity leave, access to health insurance, and social security schemes. Further, gig workers are typically denied access to the Employees Provident Fund (EPF) and Social Security Organization (SOCSO), which maintain savings and provide protection in events of sickness, injury, or retirement. Thus, the absence or lack of these minimal protections increases the vulnerability of gig workers when they become disabled due to lack of work or when faced with health emergencies (My Star 2024).

5. *Platform Control and Accountability*

Despite being independent contractors, gig workers operate

within rigid structures set by digital platforms such as Grab, Foodpanda, and Lazada. These platforms enforce strict rules, including performance targets, delivery time constraints, and customer satisfaction metrics. However, gig workers have little influence over these policies and often face penalties for circumstances beyond their control, such as traffic delays or customer cancellations. With no proper avenue for appeal, they remain at the mercy of platform algorithms and policies, further exacerbating their lack of control over their working conditions.

RECENT AMENDMENTS TO THE EMPLOYMENT ACT 1955

In recognition of evolving labour trends, the Malaysian government enacted the Employment (Amendment) Act 2022 [Act A1651], which came into force on 1 January 2023. These amendments aimed to strengthen worker protection, particularly for non-standard employees, such as part-time workers. Among the key changes were the reduction of maximum weekly working hours from 48 to 45 hours, introduction of protection against discrimination, enhancement of maternity and paternity leave, and the formal inclusion of part-time employees under the scope of the Act.

However, despite public discourse around the gig economy, the amended Act does not explicitly recognise gig workers such as e-hailing or food delivery drivers as “employees” under the Act. As such, gig workers remain largely excluded from the core protections provided by the Employment Act, including statutory leave, minimum wage, and dismissal safeguards. This has drawn criticism from labour advocates who argue that the law has yet to catch up with the realities of the digital labour market.

Despite these advances, the 2022 amendments to the Employment Act still fall short in offering full protections for all gig workers. For instance, many gig workers who rely on multiple platforms, operate as independent contractors, or who do not maintain a continuous contractual relationship with a single company are excluded from the Act’s protections. This is because the Act defines an “employee” as someone working under a contract of service, whereas most gig workers operate under contracts for service, thereby falling outside the statutory employer-employee relationship. Consequently, workers in the gig economy such as Grab drivers or food delivery riders continue to face job insecurity, poor working conditions, and insufficient legal recourse in cases of mistreatment or unfair termination.

While the amendments represent progress, there remains a need for further reforms to ensure that atypical employees, particularly interns and gig workers, are fully protected under Malaysian law. One possible reform is the introduction of a dedicated legal framework for gig workers, similar to the approach adopted in the United Kingdom, where intermediate categories of employment (e.g., “worker” status) have been legally recognised to afford some protections such as minimum wage, rest days, and insurance without classifying them as full employees. Additionally, a clearer statutory test distinguishing between genuine self-employment and economic dependency should be enacted to close the existing loopholes. For interns, legal reform could mandate minimum allowances, set limits on unpaid internships, and clarify their entitlement to workplace protections such as harassment safeguards and reasonable working hours.

Ultimately, without such targeted reforms, a growing segment of the workforce will remain in a precarious legal grey zone contributing to the economy

while remaining legally invisible. Addressing these gaps is not only essential for social justice but also crucial for modernising Malaysia's labour law to reflect the realities of a digital and platform-based economy.

Interns and the Employment Act: Continuing Gaps

For interns, the 2022 amendments also fail to provide full protection under the Employment Act 1955. Interns are still not explicitly classified as "employees" and, therefore, are excluded from the benefits that come with employee status under Malaysian law. While some universities and employers have implemented voluntary guidelines to ensure that interns are compensated and receive professional development opportunities, the lack of a statutory requirement means that many interns continue to face exploitative conditions.

These gaps in protection for interns highlight the need for further reform. Malaysia's legal framework could benefit from more specific provisions that recognize internships as a legitimate form of employment, with clear guidelines on compensation, working hours, and professional development.

GIG ECONOMY IN MALAYSIA : CURRENT LEGAL FRAMEWORK

Malaysia's existing legal framework for gig workers is still in its early stages. The Self-Employment Social Security Act 2017 (Act 789) provides limited social security coverage for self-employed individuals, but significant gaps remain. The law does not offer comprehensive protections such as minimum wage requirements or standardized contracts (MyDIGITAL, 2024).

Recent global legislative models provide insights into improving Malaysia's gig economy regulations. For example,

California's Assembly Bill 5 (AB5) classifies certain gig workers as employees, granting them access to worker protections and benefits. Singapore's upcoming legislation aims to extend work injury protection, pension coverage, and collective representation to gig workers (The Star, 2024).

Recognizing the growing importance of gig work, Malaysia is taking steps toward enacting a comprehensive gig economy law. The government is in the process of introducing the Gig Economy Workers' Act, which aims to enhance social protection, regulate contract disputes, and facilitate career advancement for gig workers. Additionally, the establishment of the Malaysian Gig Economy Commission (SEGIM) will oversee industry regulations and ensure fair compensation (The Star, 2024).

Legal experts suggest that Malaysia adopt a model similar to Singapore's, where gig workers receive work injury compensation and pension benefits. Implementing collective representation frameworks, akin to labor unions, could further empower gig workers to negotiate better terms and conditions (SHCO 2024).

The proposed gig economy regulations have received mixed reactions. While gig workers and labor rights advocates support enhanced protections, some industry stakeholders express concerns about potential economic repercussions. Startups fear that increased regulatory costs may be transferred to consumers, potentially affecting market competitiveness (The Star, 2024). The challenge lies in balancing worker protection with maintaining the flexibility that makes the gig economy attractive.

A COMPARATIVE ANALYSIS : THE UNITED KINGDOM AND THE EUROPEAN UNION

The United Kingdom (UK) and the European Union (EU) have established comprehensive legal frameworks to protect interns and gig workers, setting an exemplary standard in labor regulations.

United Kingdom

In the UK, interns are classified as workers if they receive compensation beyond expenses, entitling them to minimum wage and other statutory benefits under the National Minimum Wage Act 1998 (theInterns 2024). This provision ensures that interns who are effectively contributing labor to an organization receive fair remuneration and employment protections, discouraging exploitative unpaid internships.

For gig workers, the landmark case of *Uber BV v Aslam* [2021] UKSC 5 reshaped employment classifications. The UK Supreme Court ruled that Uber drivers were workers rather than independent contractors, granting them rights to minimum wage, holiday pay, and pension contributions. The court's decision was based on several key factors, including Uber's control over fares, routes, and work allocation, which indicated a degree of subordination similar to that found in employer-employee relationships. This judgment set a precedent that prompted further regulatory reforms, compelling gig economy platforms to improve worker protections (Littleton Chambers 2021).

Furthermore, the UK introduced the Good Work Plan in 2018, aiming to enhance employment rights by ensuring greater transparency in employment contracts, improving the enforcement of labor laws, and extending holiday pay calculations for gig workers. The plan also emphasized the necessity of aligning labor

protections with the evolving nature of digital platform work (Morris 2024).

European Union

The European Union has enacted progressive regulations to address challenges in the gig economy and internship sector. The EU Directive 2019/1152 on Transparent and Predictable Working Conditions mandates fair and predictable working conditions for all workers, including gig workers, by ensuring clarity in contractual terms and guaranteeing minimum rights such as working hours, notice periods, and job stability (Eurofound 2022). The directive obliges employers to provide comprehensive written terms of engagement, mitigating the risk of labor exploitation (IRIS 2023).

In *B v Yodel Delivery Network Limited* [2020] C-692/19, the Court of Justice of the European Union (CJEU) reinforced the principle that gig workers must be evaluated based on their dependency and subordination to their employer to determine their employment status. This includes looking at whether the worker's independence is genuine or merely superficial (Clarke 2020). The case also highlighted that even if a worker is labeled as self-employed, factors such as employer-imposed restrictions and economic dependency could warrant their classification as employees, entitling them to labor protections (Dobbie 2024).

Moreover, the European Parliament has proposed additional reforms to enhance gig workers' rights, including collective bargaining rights for platform workers and mechanisms to address algorithmic management, which influences work distribution and remuneration (European Parliament 2019). Countries such as France and Spain have further strengthened labor protections by classifying certain gig workers as employees, ensuring their

access to social security benefits and workplace protections (ISSA 2023).

THE NEED FOR COMPREHENSIVE LEGAL PROTECTIONS FOR ATYPICAL EMPLOYEES IN MALAYSIA

In Malaysia, the workforce includes a growing number of atypical employees, such as gig workers and interns, who play a critical role in the economy. However, the legal protections available to these individuals are notably insufficient compared to those enjoyed by their counterparts in developed countries (Nazruzila 2014). This section highlights the urgent need for reform to better protect the rights and interests of these atypical employees in Malaysia by criticizing the legal framework that governs their rights.

In Malaysia, the Employment Act 1955 and the Industrial Relations Act 1967 serve as the primary legislations that govern the rights and conditions of workers. While this act provides a foundation for labor rights, it primarily addresses the needs of full-time workers. Gig workers, for instance, do not receive the same benefits, such as a minimum wage guarantee, paid leave, and employee benefits, unless specifically incorporated into their contracts. Meanwhile Interns, often considered “students,” face even weaker protections, as many companies exploit their status to provide unpaid or underpaid work without adequate recourse.

Despite the mounting evidence of exploitation, especially in internships, the government remains concerned that stricter regulations may inadvertently classify internships as forced labor. Internships, especially those that are unpaid or underpaid, have long been criticized for putting young workers at risk of exploitation. However, some policymakers worry that more stringent regulations could harm Malaysia's appeal to multinational

companies, which may view the country as less attractive for investment. The Malaysian International Chamber of Commerce and Industry (MICCI) and the Malaysian Employers Federation (MEF) have raised concerns that overly burdensome regulations could make it harder to attract skilled foreign workers and could hurt industries reliant on internships for nurturing talent (Nambiar 2025).

These organizations argue that a balance must be struck between protecting interns and maintaining Malaysia's competitiveness in a globalized market. While these concerns are legitimate, it's clear that the current lack of comprehensive legal protections for interns leaves them vulnerable to exploitation. Internships should be seen as a learning experience, not as a loophole for employers to circumvent labor protections.

The inadequacies within Malaysia's labor laws surrounding atypical employees necessitate urgent reform. For a country aiming to bolster its economic standing and nurture a generation of responsible and well-protected workers, it is imperative to extend comprehensive protections to part-time workers and interns.

RECOMMENDATIONS

In summation of the preceding discussions about the inadequacy of the legal framework protecting atypical employment in Malaysia, it remains necessary to ponder upon how the country will succeed in closing those gaps while carefully balancing both business interests and worker rights. A closer look at potential reforms and policy considerations will be explored in the following sections.

1. Expansion of Employment Act 1955 Protections.

The Malaysian government should consider further expanding the Employment Act 1955 to include clear and comprehensive provisions for interns and gig workers. While the 2022 amendments marked a positive step, the current exclusions still leave many vulnerable to exploitation. The definition of “employee” should be broadened to encompass all forms of atypical employment, especially gig workers who work across multiple platforms, regardless of the number of hours worked or their specific contract terms. This would grant them access to basic employee protections such as minimum wage, paid leave, severance pay, and protection against unfair dismissal.

2. Establishing a Legal Framework for Internships.

The government should mandate internship allowances through statutory provisions to prevent exploitation of student interns and to align national practices with international labour standards. Clear regulations should be set to ensure fair compensation, appropriate working hours, and professional development for interns. This would help eliminate exploitative unpaid internships and ensure that all interns are treated with dignity and respect, much like their counterparts in full-time roles (Tucker 2024). Internships should be framed as educational opportunities rather than a loophole to bypass labor laws. This can be achieved by introducing a specific “Internship Act” or similar legal instrument.

3. Developing a Comprehensive Gig Economy Framework.

As the gig economy continues to grow, Malaysia must move toward creating a comprehensive gig economy law. The existing legal structure for gig workers in Malaysia is primarily governed by the Self-Employment Social Security Act 2017, which offers minimal protections and has significant gaps in coverage (SHCO 2024). A Gig Economy Workers’ Act should provide protections for gig workers, including minimum wage guarantees, work injury compensation, pension coverage, and clear contractual agreements. Malaysia should also establish an independent regulatory body, such as the Malaysian Gig Economy Commission (SEGIM), to oversee gig industry standards and ensure fair compensation and working conditions. In addition, integrating collective bargaining rights for gig workers would allow them to negotiate better terms with platform providers. Regulatory approaches could take inspiration from Singapore's gig economy legislation, particularly in regard to work injury protection and pension benefits.

4. Balanced Approach to Attract Investment

While stricter regulations for interns and gig workers are crucial, the Malaysian government should ensure that these reforms do not discourage foreign investment or harm economic competitiveness (SHCO 2024). A balanced regulatory approach is necessary, one that protects workers' rights while not stifling the growth of businesses or innovation. Public consultations with industry stakeholders, including business associations like the Malaysian

Employers Federation (MEF), could help create policies that protect workers without imposing unnecessary burdens on businesses.

CONCLUSION

In conclusion, Malaysia's existing legal framework remains insufficient in protecting atypical employees, especially interns and gig workers, despite the 2022 amendments to the Employment Act 1955. While positive changes were made, they fall short of ensuring comprehensive labour rights for those operating outside traditional employment arrangements.

Malaysian courts have generally accepted the classification of gig workers as independent contractors, as seen in *Loh Guet Ching*. However, this approach may overlook the economic dependency and functional integration of such workers into the core operations of digital platforms. The Integration Test, originating from *Stevenson, Jordan & Harrison Ltd v MacDonald & Evans [1952] 1 TLR 101*, offers a more nuanced method of determining employment status. Under this test, workers such as Grab drivers and Foodpanda riders whose services are central to the revenue-generating activities of the platforms would likely qualify as employees. Applying this test in Malaysia would provide a stronger legal basis for extending statutory protections to gig workers under the Employment Act 1955.

Interns, too, are left unprotected under existing legislation, often facing poor working conditions without clear avenues for redress. As such, legislative reform is urgently needed to develop dedicated legal frameworks for both interns and gig workers, ensuring equitable treatment and basic protections such as fair pay, safe work environments, and social security access.

Drawing lessons from international models, particularly the UK's recognition of a third "worker" category and the EU's platform worker directives, Malaysia has the opportunity to implement reforms that are both pragmatic and progressive. These models demonstrate that it is possible to expand legal protections without stifling business growth.

Ultimately, as Malaysia continues to modernise its labour laws, policymakers must adopt a forward-looking and inclusive approach. Protecting interns and gig workers is not merely a matter of legal classification—it is about ensuring dignity, equity, and long-term economic sustainability in an evolving labour market. A more inclusive labour regime will not only uplift vulnerable workers but also reinforce Malaysia's commitment to building a just, fair, and competitive economy.

NOTES

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⁵ Section 2 (1) of the Employment Act 1955

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