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EXPLORING MISCLASSIFICATION STATUS OF PLATFORM WORKERS IN MALAYSIA FOR ENHANCED EMPLOYMENT PROTECTIONS

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ABSTRACT

The misclassification of platform workers as independent contractors has sparked extensive debates globally, with notable implications for employment protections. In Malaysia, the classification of platform workers, as exemplified in *Loh Guet Ching v Menteri Sumber Manusia & Anor* case, remains a contentious issue. Despite the Court of Appeal's ruling, Section 101C of the Employment Act 1955, in force since 1st January 2023, introduces a mechanism to ascertain employment status. This provision, untested as of yet, presents a potential resolution for misclassification disputes involving platform workers. This article delves into the current employment legal landscape in Malaysia, exploring recent developments and potential solutions for resolving the misclassification dilemma. Utilising a doctrinal approach, the study analyses both legal and non-legal sources, revealing that selected jurisdictions have adeptly addressed misclassification challenges. Common law tests, which are prevalent in judicial proceedings, and the purposive approach offer avenues for resolution, while statutory tests, though providing clarity, require careful application due to potential adverse consequences.

Keywords: Labour law, platform workers, misclassification of employment status, purposive approach, statutory test.

INTRODUCTION

The question of employment status in the platform economy has resulted in a significant amount of scholarly research, surpassing the actual amount of work being done in this sector (Doherty & Franca, 2020). This assertion is entirely valid, given the widely recognised challenges faced by numerous state authorities in regulating the platform economy. The platform economy is a specific component of the broader gig economy or on-demand employment, which involves businesses hiring independent workers for short-term projects to earn revenue (The World Bank, 2019). According to Nasrin and Abu Yusuf (2023), digital technology has facilitated job searches for individuals and enabled companies to promptly meet evolving labour needs and address skill deficiencies. With the use of readily available high-speed internet connections and effective teleconferencing software, crucial responsibilities such as project management, piecemeal tasks, and product design can be delegated to external parties (Tan & Gong, 2021) without engaging them directly as employees. Nasrin and Abu Yusuf (2023) observed that the expansion of global monetary and informational exchanges, along with enhanced and cost-effective information technology infrastructure, has facilitated the creation of new employment opportunities on a global scale. The COVID-19 pandemic has expedited this process by significantly diminishing face-to-face interactions and international travel. Underpinning these factors, labour platforms and digital platform companies have emerged, effectively using technology to connect workers and consumers for temporary tasks or jobs that can be performed in-person or online by a flexible workforce, thereby shaping the platform economy or platform work (Johnston & Land-Kazlauskas, 2018). Tan and Gong (2021) classified platform work into three main categories, one of which is digitally-enabled work, as captured in this study. The digitally-enabled work refers to tasks that are facilitated by digital methods, such as app-based delivery services, ride-hailing, or plumbing services, rather than tasks that are exclusively performed on a computer. In essence, the term 'platform economy' or 'platform-based economy' refers to a range of creative employment models in which clients and workers are temporarily connected by an algorithm embedded in an online platform or app. These platforms connect people who need work done with those who can provide it. Additionally, the digital platforms dominate the interactions by having a set of rules that govern the transactions among the parties, usually involving one-time tasks and self-employment (Lattova, 2021; Piasna et al., 2022).

The expansion of platform work across various regions throughout the globe over the past ten years has been linked to both advantages and difficulties, primarily affecting the key participants in the labour market, namely workers and employers (Katsabian & Davidov, 2023). The platform economy offers new opportunities to boost revenue, reduce costs, and improve customer service (Md Radzi et al., 2022). Examine the ride-hailing sector, which has fundamentally transformed urban transit on a worldwide scale and is currently a crucial element of contemporary mobility. According to Statista.com (2023), it offers users unparalleled transparency, cost-effectiveness, and convenience. Many workers in the platform economy find flexibility in terms of work schedules and autonomy to be the most appealing aspect. Additionally, the emergence of the platform economy is advantageous for the younger workforce as it allows them to generate revenue from many sources. Platform workers have the ability to engage in multiple professions simultaneously, hence creating new employment prospects (Nasrin & Abu Yusuf, 2023).

However, it also has negative consequences. The platform economy is often linked to inadequate social safeguards, precarious work stability and professional advancement, and low wages, predominantly for individuals engaged in e-hailing and p-hailing sectors (Abdul Rahim et al., 2021; Aloisi & De Stefano, 2020). In the Malaysian context, e-hailing refers to the process of reserving transport services online through certain digital applications (Dewan Bahasa dan Pustaka, 2013). On the other hand, p-hailing

refers to the transportation of goods and food using motorcycles, as well as other vehicles such as cars, bicycles, or similar motorised vehicles that are facilitated by digital platforms (Dewan Bahasa dan Pustaka, 2013). For the purposes of this study, platform work is defined as work carried out through digital labour platforms in the e-hailing and p-hailing industries, as the platform economy in Malaysia is predominantly comprised of delivery and e-hailing services. According to the Department of Statistics Malaysia (DOSM, 2020), there were 183,000 individuals working as e-hailing drivers or p-hailing riders out of a total of 4,000,000 people engaged in the platform economy or on-demand work in 2018. A report released in 2021 indicated that over 700,000 Malaysians have enrolled as p-hailing riders or e-hailing drivers (Aziz, 2021). Indeed, the figure has been on the rise during the COVID-19 pandemic as numerous individuals have been displaced from their positions in conventional sectors and transitioned to these particular industries. The trend also revealed that these industries were chosen as primary financial sources rather than as secondary sources of income (Aziz, 2021).

Over the past five years, numerous local research and mainstream publications have highlighted the prevalent precarious working conditions faced by platform workers. Abdul Rahim et al. (2021) and Abd Samad et al. (2023) consistently observed that platform workers in Malaysia experienced a lack of social security protections, including insurance schemes, despite the high-risk nature of their work, inadequate retirement savings, and low rewards that are disproportionate to their extensive working hours. The Institute of Labour Market and Information Analysis (ILMIA) (2022) in a report addressing the legal issues faced by workers in the e-hailing and p-hailing sectors, substantially verified the findings of Abdul Rahim et al. (2021) and Abdul Samad et al. (2023), highlighting that platform workers are also ineligible for paid sick leave and encountered uncertainty regarding their career advancement and job security. To address the needs of platform workers, Abdul Samad et al. (2023) suggested that the government needs to develop new policies promptly. Meanwhile, Abdul Rahim et al. (2021) emphasised the necessity of creating a decent working environment for platform workers, which demands a collaborative effort between platform enterprises, workers, and the government as a mediator. Despite efforts to address these concerns, they have mostly remained unresolved. There are two primary factors driving this trend; first, the classification of platform workers as freelancers or independent contractors which typically leaves them without legal protections afforded by most regulatory frameworks (Abdul Rahim et al., 2021; Ahmad, 2020; Aloisi & De Stefano, 2020; Chan et al., 2019; Goh, 2022; ILMIA, 2022; Katsabian & Davidov, 2023; Wahab et al., 2022). The Court of Appeal's recent decision in the case of *Loh Guet Ching* provides support for this position. Loh Guet Ching, an e-hailing driver, had earlier lodged a complaint for unfair dismissal with the Department of Industrial Relations, seeking reinstatement by MyTeksi Sdn. Bhd., operating under the Grab brand. The Court of Appeal ruled that an e-hailing driver does not fall under the legal definition of a workman, as outlined in the Industrial Relations Act 1967 (Anbalagan, 2023). Second, there is a trend where digital platform firms set their own terms for pay and working conditions, leaving platform workers with very little control or entirely no control over the same (Nasrin & Abu Yusuf, 2023). Doherty and Franca (2020) suggested that the nature of platform work, which combines elements of both traditional and modern employment contexts, has led to a disagreement regarding the legal status of platform workers.

Several legal jurisdictions in Europe have been actively working on reforming their employment laws to address the rights of platform workers. This involves both legislative and judicial interventions, with the aim of striking a balance between economic interests and the social rights of all parties involved. Each legal jurisdiction internationally has its own approach to addressing the ongoing problem of platform work. More optimistically, Katsabian and Davidov (2023) noted that there is a rising body of legal opinion among judges worldwide that workers for platforms like Uber are, in fact, employees. Similarly, several jurisdictions have revised their laws by explicitly including the recognition of

platform workers and granting them special rights, or by creating precise criteria to identify the classification of platform workers.

Therefore, the authors contend that examining the most recent advancements in the classification of platform workers in several legal jurisdictions will provide valuable insights into the rationales and approaches behind resolving this issue. The initial section of the article explores the recent advancements in specific jurisdictions, such as the UK, the USA, and Australia, in addressing the status of platform work. One feature widely accepted by all legal systems is that platform workers lack legal protections in legal actions. In Malaysia, the legal structure and practices typically classify platform workers as independent contractors or self-employed, as determined by the court. Nevertheless, the recently implemented statutory tests outlined in Section 101C of the Employment Act 1955 (the EA 1955), which aim to resolve disputes regarding an employee's status, raise the question of whether they can be applied to assess the legal classification of a platform worker. The authors examine the practices and legal approaches towards the issue of misclassification of platform workers. This is done by reviewing similar tests used in other legal frameworks, whether in legislation or case law, in order to determine the potential for resolving the issue.

METHODOLOGY

This study employed a doctrinal methodology that comprises a descriptive and detailed analysis of legal sources, including statutes and case law. In order to gain a clear understanding of the issues surrounding the misclassification of platform workers in this article, the key statutes and bills pertaining to the legal status of platform workers in both local and selected jurisdictions—such as the Employment Act 1955 (Malaysia), California Assembly Bill No. 5 (California), Employment Relations Act 1996 (the UK), and Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 (Australia)- were referred to and carefully examined. The authors looked into the legal frameworks and practices of the USA, Australia, and the UK, as these jurisdictions have recently proposed reforms concerning the legal status of platform workers. In addition, the selected jurisdictions will be able to demonstrate a variety of legal approaches in addressing the issue. The investigation also encompassed non-legal sources from local, international, and foreign jurisdictions, including papers, journals, and authoritative texts pertaining to the classification of platform workers. Through an examination and analysis of the current pertinent framework, this article explores some strategies that might be considered to address the issue at hand within the Malaysian employment legal framework.

THEORETICAL FRAMEWORK UNDERLYING THE MISCLASSIFICATION OF PLATFORM WORKERS

The concern over the misclassification of platform workers stems from the inherent constraints of traditional employment law frameworks, which largely centre around the standard employment relationship. According to Deakin and Wilkinson (1998), labour law is a form of regulation that primarily originates from the state in the form of social legislation and private law. It also comes from conventional sources such as collective agreements or arbitral rulings. The employment relationship is primarily based on contractual agreements, where employment contracts are established on the basis of contractual legal principles, led by the core principle of freedom of contract (Collins et al., 2019).

Nevertheless, the implementation of the principle of freedom of contract faces practical limitations, principally resulting from asymmetries in negotiating power among the primary participants in employment agreements (Buana & Budiman, 2022; Davidov & Alon-Shenker, 2022). This problem is worsened in the context of platform work because the nature of the relationship differs from the usual factors that affect employment contracts. The discrepancy is evident when analysing the three main factors that influence employment contracts: individual adherence to job performance, consistency in full-time and regular work hours, and the mutual component of the agreement (bilaterality) (Countouris, 2007). The distinctive characteristics of platform labour pose a challenge to the suitability of these factors, hence exacerbating the problem of misclassification.

RECENT DEVELOPMENTS IN MISCLASSIFICATION OF PLATFORM WORKERS IN SELECTED JURISDICTIONS

It is evident that the classification of platform workers is not unique to Malaysia; rather, it is a global issue with implications for workers' rights and labour market dynamics. The misclassification problem is marked by complexity, with different jurisdictions adopting varying approaches. This section explores the academic and legal discourse that has evolved in response to these challenges.

The UK and the Case of Uber BV v Aslam

In the UK, the employment legal system classifies individuals in the labour market into three major groups: employees, workers, and independent contractors. There have been ongoing discussions about how to classify platform workers, with many arguing that they should be recognised as workers (Doherty & Franca, 2020). The employment statutes establish clear definitions for employees and workers within a coherent framework. In circumstances where disputes emerge over the status of individuals claiming to be employees or workers, the courts play a significant role in interpreting the relevant legislation. The common law test and approaches are utilised to ensure precision in these interpretations (Davidov & Alon-Shenker, 2022).

The Supreme Court's ruling in the pivotal case of *Uber BV v Aslam* [2021] UKSC 5 (*Uber BV v Aslam*) was initially seen as a significant stride in addressing the problem of misclassifying the employment status of platform workers. In early 2021, the Supreme Court classified Uber drivers as 'workers', in accordance with the definitions outlined in the Employment Rights Act 1996 (ERA 1996), Working Time Regulations (WTR 1998), and National Minimum Wage Act 1998 (NMWA 1998). Section 230 (3) of the ERA 1996 provides a definition for 'workers'. According to this definition, a worker can be either (a) an individual who is employed under a contract of employment, or (b) an individual who has entered into a contract to personally perform work or services for another party, where the other party is not considered a client or customer of the individual's profession or business.

Section 230 (3) (a) of the ERA 1996 pertains to the first classification of workers, specifically individuals who engage in an employment contract. Hence, it is comprehensible that the term 'employee' is encompassed under this definition (Davidov, 2005). Paragraph (b) of the same legislation pertains to the second group of workers, namely referred to as 'workers' (Davidov, 2005). In their study, Collins et al. (2019) outlined three essential criteria that define ‘workers’. Firstly, there must be a contractual agreement between two parties in which one party agrees to provide services to the other. Secondly, the services provided must be personal in nature and lack independent aspects, meaning they are not conducted as a separate business entity. In the case of *Uber BV v Aslam*, Lord Leggatt clarified the key

attributes of a contractual relationship between the parties as stipulated in Section 230 (3) (b) of the ERA 1996. The claimants are required to operate under a contractual agreement with Uber London, in which they consent to render services only for Uber London. The second aspect to be assessed is that the implementation of the service must be provided individually by a worker. If the right to assign work to another party is restricted, it cannot be considered (*Pimlico Plumbers Ltd and Anor v. Smith* [2018] UKSC 29: 34). The third criterion for designating workers is that the party receiving the service must not be individual clients or customers of the service provider.

In the case of *Bates van Winkelhof v Clyde & Co LLP* [2014] UKSC 32; [2014] 1 WLR 2047: 25-31, Baroness Hale of Richmond explains that a worker refers to a collective of self-employed individuals who offer their services within a profession or business operated by other entities. According to Davidov (2005), the purpose of including the concept of workers in national labour regulations is to provide protection for the group of entrepreneurs who rely entirely on other parties for their earnings.

In the *Uber BV v Aslam* case, the Supreme Court upholds the previous rulings of the Employment Appeal Tribunal and the Court of Appeal, holding that the claimants, Yaseen Aslam and James Farrar, are recognised as workers. Both claimants, operating as e-hailing drivers, utilise the Uber setup to provide driving services through reservations. The crux of this appeal is the jurisdiction of the Employment Tribunal to ascertain whether drivers, who participate in work coordinated through the Uber app, meet the criteria for enjoying employment rights such as minimum pay and paid annual leave. The primary question at hand is whether these drivers, who work under digital contracts with passengers through Uber as a booking agent, should be categorised as self-employed independent contractors, thereby relinquishing some benefits, or as workers who are eligible for those employment rights.

If drivers are included in contracts to provide work/services for Uber, and consequently meet the definition of workers, the second question will be pertaining to the jurisdiction of the Employment Tribunal in determining whether these drivers—who have filed claims—are considered to be employed under these contracts every time they use the Uber app within their authorised service area and become available for bookings. Uber, meanwhile, contends that these drivers' work activities are solely limited to when they are transporting people to specific destinations.

Multiple considerations help to demonstrate whether the drivers involved in this case meet the criteria of being workers who enter into contractual agreements to provide services for Uber. Uber London does not have the required permission to function as a booking agent, which goes against the regulations stated in the Private Hire Vehicles (London) Act 1998. Uber London, the second appellant and a subsidiary of Uber BV, possesses a licence to provide private automobile rental services in London. If Uber London functions exclusively as an intermediary without entering into a direct agreement with the passenger making the booking, it is considered unlawful, as the licence to take bookings is limited to those who possess a private vehicle rental operator's licence in London, such as Uber London. Moreover, the act of designating an individual as an agent to the principal necessitates clear and unambiguous authorisation. If the car provider has not explicitly granted permission, simply referencing the passenger terms that identify Uber London as an exposed (disclosed) agent to them is inadequate. The Supreme Court rejected the use of explicit language in the written agreement as evidence to demonstrate the claimant's affiliation with Uber. The court claimed the authority to reject stipulated clauses if they do not truthfully reflect the reality of the agreement, taking into account the circumstances and practical conduct of the parties. Nevertheless, the court recognised that if the written agreement corresponds to the actions and conduct of the parties involved, there is no justification for rejecting its clauses.

The Supreme Court employs a purposive approach, similar to the ruling in *Autoclenz Ltd v Belcher* [2011] UKSC 41: [2011] ICR 1157. Lord Clarke, who rejected the use of the 'parol evidence rule' and acknowledged the disparity in bargaining power between parties in an employment contract as opposed to other commercial transactions, impliedly supported the usage of this theoretical framework. The Court highlights the need to expressly evaluate this factor when deciding the statutory rights being claimed in the current case. Therefore, the court thoroughly analysed the primary objective of statutory law in this particular situation, which is to protect vulnerable workers from being inadequately rewarded for their work, enduring burdensome work requirements, or experiencing any form of unjust treatment. Workers are classified as part of the protected group because of their subordinate status and reliance on their employer. Laws pertaining to workers are designed to protect this large group of people by recognising their rights and the economic equality of their status with that of employees. The Supreme Court cites the decision rendered by the Employment Appeal Tribunal in the *Byrne Bros (Formwork) Ltd v Bairs* [2002] ICR 667 case to support this viewpoint.

The relationship between the subordination and dependency of employees and workers is demonstrated by the presence of control. Increased levels of job control result in heightened dependency for individuals, which, in turn, leads to higher economic, social, and psychological vulnerability in the workplace. This assertion was emphasised by the Supreme Court of Canada in the case of *McCormick v Fasken Martineau DuMoulin LLP* 2014 SCC 39: [2014] 2 SCR 108. Finally, the Supreme Court, citing the case *Autoclenz Ltd v Belcher* [2011] UKSC 41: [2011] ICR 1157, supported the focus on bargaining power in the employment context, which justifies an inquiry beyond the parameters specifically stated in the written agreement between the parties.

Nevertheless, the recent ruling by the UK Supreme Court in the case of *Independent Workers Union of Great Britain (IWGB) v Central Arbitration Committee (CAC)* [2023] UKSC 43 has revived the ambiguity surrounding the classification of platform workers under the UK legal system. In this instance, the Supreme Court determined that Deliveroo food delivery riders should not be categorised as workers, thereby depriving them of the entitlement to trade union representation and collective bargaining rights guaranteed by the European Convention on Human Rights (ECHR). According to the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA 1992) (Schedule A1), a trade union can request recognition from the CAC; however, this is dependent on the group being acknowledged as 'workers'. In 2016, the IWGB requested recognition from Deliveroo to negotiate as a collective on behalf of its rider members. However, both Deliveroo and later, the CAC rejected the application, stating that the riders did not meet the requirements to be considered 'workers' under Section 296 of the TULRCA 1992, which is similar to the ERA 1996.

The IWGB filed a judicial review application to contest the CAC's ruling. The High Court granted permission for the IWGB to pursue its action based on the argument that the judgment of the CAC violated the human rights of the riders as outlined in Article 11 of the ECHR. Consequently, the IWGB's challenge was allowed to continue on the grounds that the riders did not meet the domestic definition of ‘worker’ under the TULRCA 1992; however, in order to comply with the Article 11 of the ECHR rights, as mandated by Section 3 of the Human Rights Act 1998 (HRA 1998), that definition should be read down to include the riders. The High Court rejected the argument, resulting in the IWGB's unsuccessful claim.

The IWGB filed an appeal with the Court of Appeal, which affirmed the judgment of the High Court. A subsequent appeal to the Supreme Court was unsuccessful, as it unanimously determined that the riders did not have an employment relationship under Article 11 of the ECHR. Consequently, the

protective provisions of this article for trade union activities did not apply to them. The Supreme Court affirmed the decision of the CAC to deny the IWGB's application.

Essentially, it is obvious from European Court of Human Rights case law that the right to establish a trade union may only exist within the framework of an employment relationship. The Supreme Court ruled that, in relation to Article 11 of the ECHR, the concept of an employment relationship is separate from the definitions of worker and employee as defined in national legislation. When deciding if there is an employment relationship under Article 11 of the ECHR, the European Court states that a judge should refer to the criteria specified in the Employment Relationship Recommendation, 2006 No. 198 by the International Labour Organisation. The Supreme Court agreed that the CAC had meticulously scrutinised every detail of Deliveroo and the riders' relationship. One of the more significant findings of the CAC is that the riders and Deliveroo have a contract that gives riders a wide and practically unlimited right to designate a substitute to take over their work. At first glance, this right is entirely inconsistent with an employment agreement. According to the CAC's findings, Deliveroo does not oversee the decisions made by riders to use substitutes, and there are no consequences or reprimands for doing so.

Ewing (2023) criticised the Supreme Court's ruling, arguing that despite the court's previous recognition of the importance of a purposive approach and taking into account the specific circumstances of the workers, the *IWGB v CAC* decision demonstrated a victory of conventional legal formalism, disregarding the resulting outcomes. By denying Deliveroo riders the ability to engage in collective bargaining, they are also being deprived of the rights afforded to them by Article 11 of the ECHR pertaining to union membership and representation, as highlighted by the UK Supreme Court. The *IWGB v CAC* ruling is considered a setback for workers in non-traditional and precarious employment, especially platform workers. It highlights a notable restriction in the scope of the European Convention on Human Rights by attaching the ability to exercise Article 11 rights to the presence of an 'employment relationship.' This leaves individuals requiring essential protections in a state of vulnerability.

The USA and the ABC Test

In 2019, California passed Assembly Bill No. 5 (AB 5), codifying the California Supreme Court decision from the case of *Dynamex Operations West, Inc. v. Superior Court of Los Angeles (Dynamex)* (2018) 4 Cal. 5th 903, that established the 'ABC Test' for worker classification. The test is essentially for determining whether a worker is an independent contractor or an employee for purposes of the California Industrial Welfare Commission's Wage Orders, which set standards for minimum wage, overtime, meal and rest breaks, and other wage-related subjects. This test legally presumes a person providing labour or services for remuneration' is an employee rather than an independent contractor unless the hiring entity satisfies three conditions: (A) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact. (B) The person performs work that is outside the usual course of the hiring entity's business. (C) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

Two structural features that are easier to apply consistently have essentially been added to the ABC Test. The presumption of employment comes first, and in order to refute the presumption, one must first establish all three elements (A: control, B: no regular course, and C: independent business). When one or more of the requirements (A, B, or C) are not satisfied, the cumulative result is that an individual working in exchange for money could be aware that he is an employee. The presumption encourages

certainty and predictability and may even lessen litigation because it places a substantial burden on the employer to prove otherwise—that is, to meet all three elements. The ABC Test also incorporates open-ended standards. There is much uncertainty surrounding the determination of 'control,' whether the service is rendered outside of the 'usual course' of business, and whether the individual is 'customarily engaged in an independently established...business.' As a result, the ABC Test allows for a considerable amount of interpretation and addresses any attempts at evasion.

AB 5 extended the ABC Test's reach, affecting the entire California Labour Code and Unemployment Insurance Code. However, exemptions were granted to certain occupations. In 2020, app-based transportation and delivery companies, initially not exempted, gained an exception through Proposition 22. This controversial move classified e-hailing drivers as independent contractors, leading to a lawsuit challenging its constitutionality. The ongoing legal battle involves drivers from Uber, Lyft, DoorDash, and the Service Employees International Union (Sylvia, 2023). Although, as of now, the ABC Test is not applicable to platform workers in the USA, the authors contended that its potential implications for platform workers in Malaysia will be discussed below, given that the statutory test included in the EA 1955 for determining employee status resembles the ABC Test model.

Australia

The Fair Work Act 2009 (FWA 2009) fundamentally establishes a framework for safeguarding employment rights, focusing on the employee segment in Australia (McCrystal, 2014; Rawling, 2021). However, the term 'employee' in the FWA 2009 lacks a precise interpretation. Section 11 briefly mentions that the terms 'employee' and 'employer' within Part 1 of the FWA 2009 adhere to common interpretations. Sections 13 and 14 further expound on 'employee' and 'employer' in the national system, referring to a collective of employers and employees involved in hiring and being hired, without explicitly defining the nature of the hiring relationship. Nevertheless, consensus suggests that, within the context of FWA 2009, the term 'employee' implies the existence of an employment or service contract, aligning with common law principles (McCrystal, 2021; Pittard, 2021).

Therefore, the reference to the case law, mostly regarding vicarious liability, highlights the significance of the concept of division of employment status in determining whether an individual is working either as an employee or independent contractor (Stewart, 2021; *Diego Franco v Deliveroo Australia Pty Ltd* [2021] FWC 2818 as demonstrated in the cases of *Hollis v Vabu Pty Ltd* (2001) 207 CLR 21 and *Stevens v Brodribb Sawmilling Pty Ltd* (1986) 63 ALR 513).

The case law suggests two points of view about platform workers' status in the Australian legal system. First, the dynamic interpretation of some of the components taken into consideration can be attributed to a high degree of uncertainty. In the case of *Diego Franco v. Deliveroo Australia Pty Ltd (Diego Franco)* [2021] FWC 2818, Commissioner Cambridge acknowledged that the control factor that was introduced in the *Amita Gupta v. Portier Pacific Pty Ltd; Uber Australia Pty Ltd t/a Uber Eats* [2020] FWCFB 1698 case was interpreted differently. Commissioner Cambridge ruled that the parties' ability to terminate the service agreement if the quality of the service is not up to par is an exercise of control and should not be regarded as a neutral factor (*Diego Franco*). When something is unfavourable to a person's position as an employee or even an independent contractor, it serves as a neutral factor in determining that person's employment status. In the *Diego Franco* case, the Fair Work Commission (FWC) also raises doubt on the importance of exclusivity as a distinguishing feature of a work relationship, in line with modern career realities influenced by digital technology. The FWC acknowledges that an individual may be regarded as an employee even if they are not physically present

at their place of employment, accepting assignments from various sources at the same time, and effectively accomplishing responsibilities with the use of technology. An even more concerning truth is that courts and tribunals are using dynamic techniques to assess employment status cases, and there is a chance these approaches will change in response to rulings from higher courts. For example, the High Court held in *WorkPac Pty Ltd v. Rossato* [2021] HCA 23, para. 62, that the use of a multi-factor test to assess the general pattern and behaviour of contracting parties outside of the express terms of agreement should be done with caution. The High Court asserts that this approach can be interpreted as exceeding the court's legitimate jurisdiction. Second, rulings made in the cases up to this point have limited legal force because they were mostly made by the FWC's full panel, leaving questions unanswered at the Federal Court level or above.

However, recent decisions made by the Australian High Court in the cases of *Construction, Forestry, Maritime, Mining and Energy Union v. Personnel Contracting Pty Ltd* [2022] HCA 1 and *ZG Operations Australia Pty Ltd v. Jamsek* [2022] HCA 2 make it clear that nearly all platform workers will be treated as independent contractors, so long as the contracts created by the digital platform specifically state that they are contractors. This has decreased ambiguity while also restricting the avenues of remedy open to platform workers who are at risk.

The Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 may have potentially countered the issue of misclassification of platform workers in Australia. Schedule 1, Part 7, Division 2 (Workplace delegates' rights for road transport contractors and digital platform workers) enables the FWC to establish standards on matters such as payment terms, deductions, working hours, record-keeping, consultation, representation, and union delegates' rights for the 'regulated workers'. There are two general types of regulated workers mainly 'employee-like workers' working with a digital labour platform operator, or 'road transport businesses' working with a regulated road transport contractor (Summary of the Fair Work Legislation Amendment (Closing Loopholes) Bill 2023). Hence, platform workers are regarded as 'employee-like workers' in the context of the Fair Work Legislation Amendment (Closing Loopholes) Bill 2023. Even though the Bill has partially become law, the proposal relating to the regulated workers has not been passed.

STATUS OF PLATFORM WORKERS IN MALAYSIA: LAW AND PRACTICES

There is no statutory provision specifically setting out the position of platform workers in the Malaysian labour law system. Malaysia adopts the English legal framework in governing the employer-employee relationship, which is constituted in the statutory provisions and judicial precedents. Two categories of workers are recognised in the legal framework, which are: employees and independent contractors. The protection under the law is only extended to cover the employed people who are classified as 'employees. The primary statutes regulating employment relationships are the Employment Act 1955 (EA 1955), the equivalent statute for Sabah and Sarawak Labour Ordinances, the Industrial Relations Act 1967 (IRA 1967) and the Trade Unions Act 1959 (TUA 1959), all of which mostly define an employee as a person employed under a contract of employment by an employer. Hence, the employee is subjected to similar tests applied by English courts to determine whether a worker is an employee or an independent contractor, considering the unclear definition of the same in all the relevant statutes.

Digital platform companies tend to describe the position of platform workers involved with them as independent contractors who provide services to clients, rather than employees. Digital platforms such as Grab refer to their platform drivers as 'third-party providers' in the terms and conditions between

Grab and its service users (Grab.com, Terms of service). Paragraph 2.10 of the definition of 'third-party provider' means an independent third party that provides services to users through the digital platform provided by Grab (Grab.com, Terms of Service). Grab holds the largest e-hailing market in Malaysia and even operates in almost every major city in Southeast Asia (Jais & Marzuki, 2020). The same reference applies to platform riders who carry out food or goods delivery activities through their digital platform (Paragraph 2.9 Grab.com, Terms of service). Meanwhile, Foodpanda, a digital platform that dominates the food delivery service sector in Malaysia, refers to its platform riders as 'riders' or 'independent contractors' in their privacy policy (Rider.foodpanda.my).

Digital platforms that handle the delivery of goods, such as Lalamove and Mrspeedy, also use similar terms such as 'third-party independent driver or rider' (Lalamove.com) and 'third-party independent courier' (Mrspeedy.my), respectively. In fact, the exclusion of the relationship between the digital platform and the platform rider or driver is expressed through specific terms which state that the digital platform only acts as an intermediary firm between the customer and the platform rider or driver, rather than as their agent (Lalamove.com; Mrspeedy.my; Grab.com). In fact, they are not even considered as employees or staff of the digital platform (Paragraph 1.4 Terms of service, Grab.com). However, contradictions arise in the use of the terms. For example, in the privacy policy of one of the digital platforms, an individual who provides services to them is referred to as an employee when justifying the personal data processing for the purpose of hiring employees (Rider.foodpanda.my).

In terms of operating systems, the relationship model between digital platforms, customers, and platform workers combines digital technology and traditional jobs (De Stefano, 2016). Digital technology is fully used as a connecting tool between the parties, that is, between the digital platform and the platform workers; digital platforms and customers; and platform workers and customers. The digital platform assigns tasks, supervises, and evaluates the assignments given to platform workers. The digital platform also accepts orders, oversees them, and ensures the fulfilment of customer orders completely online. At the same time, elements of traditional work still exist because the implementation of services offered by digital platforms requires physical contact. For instance, food or goods delivery service and transportation from one destination to another destination chosen by the customer must be performed by individuals using their energy and equipment, such as vehicles.

From a legal point of view, the relationship between the platform workers and the digital platform is the result of a mutual agreement in the form of a contract. The terms of the contract establish the method of involvement of platform workers in the operating system of the digital platform business model, such as handing over the authority to the digital platform to supervise, discipline, or terminate their services, or prevent them from using the platform (Stewart & Stanford, 2017). Foodpanda has drawn up a strict compliance system for work operations, with non-compliance leading to implications for delivery riders, such as affected income or account suspension for a certain period ranging from 3 to 10 days (Rider.foodpanda.my). Grab also imposes similar consequences on its platform workers who fail to follow the code of conduct list (Grab.com, Code of Conduct). Usually, the platform workers also bear all or almost all the risks related to providing equipment, disruption in digital platform services, uncertainty of wage flow, deactivation of services or relationships, and others (Stewart & Stanford 2017). Grab includes almost all aspects of this risk exclusion in the liability limitation clause of its terms of service (Grab.com, Terms of service). In fact, the riders on Foodpanda's platforms clarify that the conditions of their agreement with the digital platforms have been changed periodically without consultation, particularly with regard to the payment methods (Abdul Rani, 2023).

Stewart and Stanford (2017) assert that the interaction between the digital platform and the consumer or user is contingent upon the contractual agreement established by the digital platform. This contract encompasses the standard terms that users are required to agree to before accessing the digital platform application on their device. Typically, it restricts the liability of the digital platform for any issues that may arise during the process of delivering the service. Users are often unaware of the extent to which the digital platforms' responsibilities are constrained by these contracts. Moreover, the relationship between platform workers and end users is ambiguous since it depends on the intermediary's business model and how the regulatory agency defines it (ILMIA, 2022). The utilisation of digital platforms for goods and food delivery services introduces complexities in the connection between the involved parties, as it can involve more than three entities. Digital platforms commonly define their role as intermediaries, connecting customers with service providers, providers with delivery riders, and delivery riders with customers.

The reality of the relationship between digital platforms and platform workers is complicated, unique, and contradictory to traditional employment relationships and work activities, plunging groups of platform workers into ambiguity regarding their status. The government is aware that this situation is causing difficulties in proving the existence of service contract elements in gig economy jobs (House of Representatives, 2020). In fact, this statement specifically refers to e-hailing drivers and p-hailing riders.

The status of platform workers as independent contractors according to industry labels and practices has been confirmed through High Court judgments in a judicial review proceeding. The case in question is *Loh Guet Ching v Minister of Human Resources & Anor* [2022] 1 LNS 2388 (*Loh Guet Ching*). In early January 2020, the claimant filed a report to the Industrial Relations Department against MyTeksi Sdn Bhd (operating under the name Grab) for suspending its account on the Grab digital application due to unsatisfactory passenger reviews and ratings (Justin, 2020). The claimant filed a representation of unfair dismissal under Section 20 IRA 1967. Among other things, the claimant explained that he was unfairly dismissed by Grab without any prior notice with various unfounded and unreasonable accusations and/or reasons, and was denied any right to be heard. The Minister of Human Resources refused to refer this matter to the Industrial Court. Accordingly, the claimant filed a judicial review application asking the High Court to set aside the Minister's decision and refer the case to the Industrial Court. However, the claimant's application was rejected by the High Court. Judge Ahmad Kamal Md Shahid ruled that the claimant was not a Grab employee.

Grab, through its legal representatives, argued that Grab drivers are not employees according to the IRA 1967 because the contract concluded between the drivers and Grab constitutes as a commercial contract, rather than an employment contract. As a result, the Industrial Court does not have jurisdiction to deal with the claim filed by the claimant, and the Minister’s decision was correct to reject this case from being referred to the Industrial Court for a hearing. The lawyer representing Grab also argued that the claimant's case should be distinguished from the case of *Uber BV v Aslam*. This is because the meaning of 'employee' in the IRA 1967 is different from the meaning of ‘worker’ according to the ERA 1996, which was referred to in the case of *Uber BV v Aslam.* The ERA 1996 provides a broader definition of employee compared to the IRA 1967. The Industrial Court declined to adopt the UK trend of designating platform drivers as workers, citing the long-standing legal precept that Malaysian courts are not bound by rulings made in courts of Commonwealth nations (*Loh Guet Ching v. Minister of Human Resources & Anor* ([2022] 1 LNS 2388, para 44). The Court of Appeal has upheld the High Court's judgments in a subsequent appeal (Anbalagan, 2023).

Eventually, a newly added provision to the EA 1955, Section 101C, which outlines a list of criteria for assuming an individual worker as an employee, may potentially be helpful to resolve the misclassification status of platform workers.

According to Section 101C (1) of the EA 1955, in any legal proceeding for an offence under this Act, if there is no written contract of service for a specific category of employee listed in the First Schedule, it is assumed, unless proven otherwise, that a person is an employee if the following conditions are met: (a) The person's manner of work is controlled or directed by another person; (b) The person's working hours are controlled or directed by another person; (c) The person is provided with tools, materials, or equipment by another person to carry out their work; (d) The person's work is an essential part of another person's business; (e) The person's work is solely for the benefit of another person; or (f) The person is paid at regular intervals for the work they have done, and this payment makes up the majority of their income.

Moreover, according to Section 101C (2) of the EA 1955, the same presumption applies when it is necessary to establish the identity of an employer. For the purpose of Subsection (1), it is assumed, unless proven otherwise, that a person is an employer if: (a) they have control or authority over how another person works; (b) they have control or authority over the hours that another person works; (c) they provide tools, materials, or equipment to another person for the purpose of carrying out work; (d) the work of another person is an essential part of their business; (e) another person works exclusively for their benefit; or (f) regardless of whether or not they pay for the work done by another person on their behalf.

The new provision is viewed as presumptive in determining the employer-employee relationship when not governed by a written service contract, particularly in cases related to offences outlined in the EA 1955. Almost all violations of workers' rights under the EA 1955 are considered offences. Additionally, the absence of a written service contract is acceptable, even if the contract is labelled as a contract for services. The presumptive principle places the burden of proof on the employer to demonstrate that the hired individual is not an employee under an employment contract if any listed factors are present in the relationship. Meaning that, in order to invoke Section 101C, a worker must demonstrate that at least one of the listed indicators is present in his or her relationship with the hiring party. The onus then shifts to the employer to demonstrate that the individual they hired is not an employee if one of the specified conditions is found. According to the manner in which this clause is read, each demonstrated indicator provided by the employee requires the employer to refute it in turn. Section 101C of the EA 1955 is seen as encompassing platform workers, confirming common law principles in testing the existence of the employment relationships by considering the control element, integrational aspect, or economic reality factor. The distinctive feature of this statutory provision is the easier burden of proof, favouring the employee and promoting certainty and predictability similar to the ABC Test above. Nevertheless, while this new provision is anticipated to address the uncertainty of platform worker status, its full effectiveness in addressing workers' rights deficits remains uncertain, as no case has been tested so far. Wong et al. (2022) anticipated the difficulties employers may have while implementing Section 101C of the EA 1955. Some businesses may choose to close their doors in industries where they cannot incorporate platform workers into their existing business model because of legal requirements pertaining to an employer-employee relationship, even though one that was never meant to exist. The law's broad employment protections would put an unmanageable financial strain on platform companies.

SOLVING THE MISCLASSIFICATION STATUS OF PLATFORM WORKERS

This section provides a succinct overview of potential strategies to address misclassification issues. Acknowledging the multifaceted nature of this problem, the authors propose various strategies. One such strategy involves employing common law tests, which courts have historically utilised to resolve misclassification disputes. The purposive approach, employed in the interpretation of laws and contractual agreements to align with the parties' intentions, offers a pragmatic means to ensure consistency in judicial decisions. Despite the emphasis on written contracts, a thorough analysis of overall circumstances becomes imperative to ascertain the true relationship between platforms and their workers. Notably, the UK courts, in the context of determining platform workers' employment status, have widely embraced this approach, providing guidance for potential disputes in Malaysia.

Additionally, the authors assert the role of statutory tests as an alternative mechanism for resolution. Recognising the potential clarity and legal standards offered by statutory tests, it is advised to exercise caution in their application. Explicit legislative intent is crucial to delineate the law's scope, preventing the emergence of unnecessary disputes regarding employment status. Drawing insights from the USA's experience with the ABC Test, the significance of exemption clauses becomes evident in exempting certain categories of workers, highlighting the need for careful consideration. While Australia contemplates the enforcement of special regulations to grant employment rights to platform workers, this presents a valuable learning opportunity for Malaysia, should it consider a separate regulation for this workforce.

CONCLUSION

In conclusion, the misclassification of platform workers is a multifaceted issue that warrants significant attention from academia, policymakers, and legal practitioners. The case of Malaysia's Section 101C of the EA 1955 represents one approach in addressing the problem, although its effectiveness remains untested. Globally, there are diverse legal frameworks and solutions being designed to protect platform workers and ensure their rights. The sustainable resolution of misclassification issues requires a balanced approach, considering the implications of common law tests, purposive approaches, and statutory tests. This study reinforces the significance of ongoing research and policy development to protect the rights and inclusivity of platform workers while upholding the principles of labour law. Nevertheless, the study has restricted its scope to platform workers in specific industries, and accordingly, the analysis of Section 101C of the EA 1955 was restricted to this segment of platform workers. It would be significant to conduct a more extensive future study that embraces a broader range of platform work in order to determine the potential implications of the statutory provision. In addition, an empirical study that involves the collection of data from platform firms, platform workers, and legal practitioners would be necessary to gain a more comprehensive understanding of the impact of invoking Section 101C of the EA 1955 to advocate for the rights of platform workers.

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REFERENCES

Abd Samad, K., Abd Rahman, N. H., Ismail, S., & Marmaya, N. H. (2023). Is the well-being of gig workers in Malaysia better? The reality of pain and gain. *International Review of Applied Economics, 37*(4), 518–531. https://doi.org/10.1080/02692171.2023.2240243

Abdul Rahim, A. F., Mohd Noor, R., Najid, N. A. & Zulkifli, N. (2021). Strengthening the gig economy: Future of digital labor workforce platform post-covid 19. *Gading Journal for Social Sciences, 24*(4), 17-26.

Abdul Rani, A. H. (2023, November 11). *Online interview.* Timbalan Presiden Persatuan Penghantar PHailing Malaysia (PENGHANTAR), Google meet.

Ahmad, N. (2020). Gig economy: The future of working. *International Journal of Communication, Management and Humanities, 1*(2), 45-56.

Aloisi, A. & De Stefano, V. (2020). Regulation and the future of work: The employment relationship as an innovation facilitator. *International Labour Review, 159*(1), 47-69. https://doi.org/10.1111/ilr.12160

Amita Gupta v. Portier Pacific Pty Ltd; Uber Australia Pty Ltd t/a Uber Eats [2020] FWCFB 1698.

Anbalagan, V. (2023, November 27). *E-hailing drivers not employees, court reaffirms*. Free Malaysia Today. https://www.freemalaysiatoday.com/category/nation/2023/11/27/court-of-appeal-affirms-that-e-hailing-drivers-are-not-employees/

Autoclenz Ltd v Belcher [2011] UKSC 41: [2011] ICR 1157.

Aziz, I. H. (2021, September 20). *Bantu pekerja e-haling, p-hailing.* Berita Harian Online. https://www.bharian.com.my/berita/nasional/2021/09/866374/bantu-pekerja-e-haling-p-hailing

Bates van Winkelhof v Clyde & Co LLP [2014] UKSC 32; [2014] 1 WLR 2047.

Buana, M. S., & Budiman, R. (2022). Indonesia's minimum wage policy after the omnibus law: A comparative analysis from Islamic principles. *UUM Journal of Legal Studies, 13*(2), 187-214. https://doi.org/10.32890/uumjls2022.13.2.8

Byrne Bros (Formwork) Ltd v Bairs [2002] ICR 667.

Chan, D., Voortman, F., & Rogers, S. (2019, January). *The rise of platform economy*. Deloitte. https://www2.deloitte.com/content/dam/Deloitte/nl/Documents/humancapital/deloitte-nl-hc-the-rise-of-the-platform-economy-report.pdf

Collins, H., Ewing, K. D. & McColgan. (2019). *Labour law.* (2nd ed.). Cambridge University Press.

Construction, Forestry, Maritime, Mining and Energy Union v. Personnel Contracting Pty Ltd [2022] HCA 1.

Countouris, N. (2007). *The changing law of the employment relationship: Comparative analyses in the European context*. Ashgate Publishing.

Davidov, G. & Alon-Shenker, P. (2022). The ABC test: A model for employment status determination? *Industrial Law Journal, 51*(2), 235-276. https://doi.org/10.1093/indlaw/dwac004

Davidov, G. (2005). Who is a worker? *Industrial Law Journal, 34*(1), 57-71. https://doi.org/10.1093/ilj/34.1.57

De Stefano, V. (2016). The rise of the just-in-time workforce: On demand work, crowdwork, and labor protection in the gig-economy. *Comparative Labor Law & Policy Journal, 37*(3), 1-51.

Deakin, S. & Wilkinson, F. (1998, June). *Labour law and economic theory: A reappraisal* (Working Paper No. 92). ESRC Centre for Business Research, University of Cambridge.

Department of Statistics Malaysia (DOSM). (2020). *Gig workers in Malaysia: A review of definitions and estimation*. DOSM Newsletter. https://www.dosm.gov.my/v1/uploads/files/6_Newsletter/Newsletter%202020/DOSM_MBLS_1-2020_Series-8.pd

Dewan Bahasa dan Pustaka. (2013). *Gerbang kata.* http://ekamus.dbp.gov.my/searchIstilah.aspx

Diego Franco v Deliveroo Australia Pty Ltd [2021] FWC 2818.

Doherty. M. & Franca, V. (2020). Solving the gig-saw? Collective rights and platform work. *Industrial Law Journal, 49*(3), 352-376. https://doi.org/10.1093/indlaw/dwz026

Dynamex Operations West, Inc. v. Superior Court of Los *Angeles* (2018) 4 Cal. 5th 903.

Ewing, K. (2023, December 13). *Judicial backpedalling on trade union rights in the gig economy: Deliveroo in the United Kingdom Supreme Court*. Institute of Employment Rights. https://www.ier.org.uk/comments/judicial-backpedalling-on-trade-union-rights-in-the-gig-economy/#:~:text=Not%20only%20are%20Deliveroo%20riders,not%20conferred%20on%20the%20riders'

Goh, E. (2022, August 30). *Responses to delivery riders missing the bigger picture*. The Centre. https://www.centre.my/post/responses-to-delivery-riders-missing-the-bigger-picture

Grab.com. (n.d.). *Terms of service: Transport, delivery and logistics*. https://www.grab.com/my/termspolicies/transport-delivery-logistics/

Hollis v Vabu Pty Ltd (2001) 207 CLR 21.

House of Representatives. (2020, August 11). *Official statement of Parliament: Second meeting 14th Parliament term, no. 18.* (M. Saravanan).

Independent Workers Union of Great Britain (IWGB) v Central Arbitration Committee (CAC) [2023] UKSC 43.

Institut Maklumat dan Analisis Pasaran Buruh (ILMIA). (2022). *Kajian mengenai isu perundangan perburuhan, perhubungan perusahaan dan perlindungan sosial*. ILMIA: Jabatan Perangkaan Malaysia. https://www.ilmia.gov.my/index.php/en/component/zoo/item/article-kajian-gig-2022

Jais, A. S. & Marzuki, A. (2020). E-hailing services in Malaysia: Current practices and future outlook planning Malaysia. *Journal of the Malaysian Institute of Planners, 18*(3), 128-141.

Johnston, H. & Land-Kazlauskas, C. (2018). *Organizing on-demand: Representation, voice and collective bargaining in the gig economy.* Conditions of work and employment series No. 94, ILO Office, Geneva.

Justin, O. (2020, January 4). *In possible test case, former Grab driver reports firm for unfair dismissal*. MalayMail. https://www.malaymail.com/news/malaysia/2020/01/04/in-possible-test-case-formergrab-driver-reports-firm-for-unfair-dismissal/1824561

Katsabian, T. & Davidov. G. (2023). Flexibility, choice, and labour law: The challenge of on-demand platforms. *University of Toronto Law Journal*, *73*(3), 348-379. https://doi.org/10.3138/utlj-2021-0113

Lalamove.com. (n.d.). *Terms & conditions*. https://www.lalamove.com/ en-my/terms-and-conditions

Lattova, S. (2021). Online platforms and "dependent work" after Uber. *Masaryk University Journal of Law and Technology, 15*(2), 197-223. https://doi.org/10.5817/MUJLT2021-2-3

Loh Guet Ching v Minister of Human Resources & Anor [2022] 1 LNS 2388.

McCormick v Fasken Martineau DuMoulin LLP 2014 SCC 39: [2014] 2 SCR 108.

McCrystal, S. (2014). Collective bargaining beyond the boundaries of employment: A comparative analysis. *Melbourne University Law Review, 37*(3), 662-698.

Md Radzi, M. S. N., Bidin, A., Musa, M. K., & Hamid, N. A. (2022). Protecting gig workers' interests in Malaysia through registered association under Societies Act 1966. *IIUM Law Journal, 30*(SI), 157-179. https://doi.org/10.31436/iiumlj.v30iS1.702

Mrspeedy.my. (n.d.). *Terms & Conditions for MrSpeedy Malaysia*. https://mrspeedy.my/terms-and-conditions

Nasrin, K. & Abu Yusuf, M. (2023). Gig workers and platform economy: Benefits, challenges and the way forward. *The Cost and Management, 51*(3), 35-43.

Piasna, A., Zwysen, W. & Drahokoupil, J. (2022). *The platform economy in Europe: Results from the second ETUI Internet and platform work survey*. Working Paper 2022.05.

Pimlico Plumbers Ltd and Anor v Smith [2018] UKSC 29.

Pittard, M. (2021). Delivering employment status - Fair work commission reinstates unfairly dismissed gig worker. *Employment Law Bulletin*, *26*(4), 38-42.

Rawling, M. (2021, January). *Proposals for legal protections of on-demand gig workers in the road transport industry*. UTS Law Faculty.

Rider.foodpanda.my. (n.d.). *Privacy Policy MY*. https://rider.foodpanda. my/privacy-policy-my/

Statista.com. (2023). *Ride-hailing – Malaysia*. October. https://www.statista.com/outlook/mmo/shared-mobility/shared-rides/ride-hailing/malaysia#analyst-opinion

Stevens v Brodribb Sawmilling Pty Ltd (1986) 63 ALR 513.

Stewart, A. & Stanford, J. (2017). Regulating work in the gig economy: What are the options? *The Economic and Labour Relations Review*, *28*(3), 420-437.

Stewart, A. (2021). *Stewart's Guide to Employment Law* (7th ed.). Sydney: The Federation Press.

Sylvia, J. K. (2023, March 20*). Insights you can contract if you want to: California appellate court leaves prop 22 largely intac*t. Baker & Hostetler. https://www. bakerlaw.com/insights/you-can-contract-if-you-want-to-california-appellate-court-leaves-prop -22-largely-intact/

Tan, Z. G. & Gong, R. (2021). *Digital platform work*. Kuala Lumpur: Khazanah Research Institute.

Uber BV v Aslam [2021] UKSC 5.

Wahab, H. A., Razak, S. S. A., & Mahmod, N. A. K. N. (2022). Legal issues in working from home amid COVID-19 pandemic in Malaysia. *UUM Journal of Legal Studies*, *13*(2), 163-186. https://doi.org/10.32890/uumjls2022.13.2.7

Wong, K. C., Lim, R. K. Y., & Sidhu, S. (2022, April 22). *Gig workers in Malaysia: Protection under New Law?* Zul Rafique & Partners. https://www.zulrafique.com.my/article-sample.php?id= 1975

WorkPac Pty Ltd v. Rossato [2021] HCA 23.

World Bank Group. (2019). *World development report 2019: The changing nature of work.* http://documents.worldbank.org/curated/en/816281518818814423/2019-WDR-Report.pdf

ZG Operations Australia Pty Ltd v. Jamsek [2022] HCA 2.