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Should the law on labour protection for “gig workers” in Hong Kong be reformed? If so, why and how? If not, why not?

1. Introduction

Gig workers refer to workers taking up temporary work, receiving project-based compensation, and enjoying flexibility in terms of how the work is performed.¹ Nearly 80% of gig workers take up work through online platforms, which connect workers to consumers digitally.² Examples of these online platforms include Uber, Foodpanda, Deliveroo, Etsy, TaskRabbit, etc.

The gig economy has thrived in the recent decade due to technological advancement and lifestyle changes. However, legislation in this area of law remains underdeveloped in Hong Kong. Labour protection laws have not been extended to gig workers despite their increasing contribution to our economy. Nor is there legislation which specifically regulates the operation of online platforms or the relationship between gig workers and online platforms. Particularly, recent strikes by Foodpanda delivery workers illustrate the lack of protection both for deliverers in the organisation and for Hong Kong’s gig workers in general. In light of this situation, this essay addresses why and how labour protection law for gig workers should be reformed in Hong Kong.

2. Current Law

¹ Gwendolyn Paige Watson and others, ‘Looking at the Gig Picture: Defining Gig Work and Explaining Profile Differences in Gig Workers’ Job Demands and Resources’ (2021) 46(2) Group & Organization Management <<https://journals-sagepub-com.eproxy.lib.hku.hk/doi/full/10.1177/1059601121996548>> accessed December 2021.

² *Ibid.*

At present, Hong Kong's labour protection laws are framed mainly based on the 'employee/ self-employed' classification. Employees enjoy a variety of rights and benefits protected in the Employment Ordinance (Cap. 57) ("EO"), the Employees' Compensation Ordinance (Cap. 282) ("ECO"), Minimum Wage Ordinance (Cap 608) ("MWO"), the Mandatory Provident Fund Schemes Ordinance (Cap. 485) ("MPFSO"), etc. Examples of rights protected by legislation include payment of wages, compensation for work-related injuries, enjoyment of statutory holidays, minimum wage, employer's contribution to the Mandatory Provident Fund, etc.

In most labour protection-related Ordinances, 'employee' refers to an individual engaged by an employer under a contract of employment, with exceptions listed in EO s.4(2) and s.4(2A).³ In the ECO, 'employee' also covers individuals working under a contract of apprenticeship but explicitly excludes casual workers.⁴ To determine whether a person is engaged as another's employee, the courts will examine all features of their relationship against the background of their relationship.⁵ It is a "matter of overall impression".⁶ Relevant factors are summarised in *Tang Chau Yuet v Fu Kin Po*.⁷ They include:

- (1) Whether the alleged employer had the degree of control over the task of the alleged employee which was commensurate to his capacity as the employer
- (2) Whether the alleged employee provided his own equipment for the task
- (3) Whether the alleged employee hired his own helpers for the task
- (4) Whether the alleged employee took any financial risk and the nature/degree of it

³ EO s 2,4.

⁴ ECO s 2(1).

⁵ *Poon Chau Nam v Yim Siu Cheung* [2007] 2 HKC 135 (CFA), para 18.

⁶ *Ibid.*

⁷ [2011] 1 HKLRD 519, para 12.

- (5) Whether the alleged employee had an opportunity of profiting from sound management in the performance of his task
- (6) Whether the alleged employee bore any responsibility for investment and management, and the nature/degree of it
- (7) Whether the alleged employee was properly regarded as part of the alleged employer's organisation
- (8) Whether the alleged employer bore any responsibility in relation to insurance and tax for the alleged employee
- (9) Whether the alleged employee was carrying on business in the trade in question
- (10) What was the parties' own view of their relationship
- (11) Whether the traditional structure of the trade or profession concerned and the practices within it would assist with the understanding of their relationship

It has been acknowledged by Legislative Council research that under the present 'employee/self-employed' dichotomy, gig workers are commonly classified as self-employed persons instead of employees.⁸ Gig workers enjoy the same level of protection as self-employed persons – close to no protection – when in reality their employment nature bears similarities with both traditional employees and self-employed persons.

3. Reform on Labour Protection Laws for Gig Workers Needed

3.1. Advancements in the Modern Workplace

⁸ Legislative Council Secretariat Research Office, *Information Note: Protection of Labour Rights of "Gig Workers" in Selected Places* (2020) para 1.3.

As noted in the Australian case of *Franco v Deliveroo Australia Pty Ltd*,⁹ arrangements for work have changed dramatically in recent times and especially during the pandemic. Traditional employees in some industries begin to enjoy the level of flexibility enjoyed by gig workers. For certain office jobs, physical presence at the working environment is no longer required and fixed working hours no longer apply. Development of new technologies has also weakened the notion of ‘exclusivity’ required to establish employment, with remote work arrangements allowing employees to work for different employers simultaneously.

Advancements in the modern workplace imply the line between employees and gig workers is gradually blurred. As the gap between traditional employees and gig workers narrows, labour rights and protections received by gig workers should also be adjusted to reflect such changes. A reform on labour protection law for gig workers is well-justified.

3.2. Unaddressed Problems in the Relationship between Online Platforms and Gig Workers

The gig economy relies heavily on online platforms acting as a middleman between consumers and gig workers. However, past research has revealed existing problems in the relationship between online platforms and gig workers. It has been described that online platforms treat gig workers as employees in terms of freedoms but as self-employed individuals in terms of risks.¹⁰ This essay

⁹ [2021] FWC 2818 paras 115-118.

¹⁰ David Halliday, ‘On the (mis)classification of paid labor: When should gig workers have employee status?’ (2021) 20(3) Politics, Philosophy & Economics <<https://doi-org.eproxy.lib.hku.hk/10.1177/1470594X211015467>> accessed December 2021.

highlights two main issues in labour protection law for gig workers to illustrate why reform in the law is warranted.

3.2.1. Insurance and Compensation for Injuries

Under the ECO, employers are required to purchase insurance to cover injuries resulting from work-related accidents.¹¹ Insurance is required for all employees who work under a contract of service or apprenticeship,¹² regardless of their length of employment. Besides, the employer is also liable for compensation to the employee where the employee suffers injuries arising out of and in the course of employment.¹³

However, insurance and compensation for gig workers is not legally required since gig workers are normally not classified as ‘employees’ within the meaning in the ECO. Although online platforms or hirers of gig workers can purchase insurance and provide compensation for gig workers at their own discretion, the lack of statutory requirements deprives gig workers of a minimum safety net when performing their work.

The unfairness in not extending insurance and compensation to gig workers lies in the fact that employee insurance and compensation is mandatory even for part-time or temporary employment. Part-time and temporary workers have a much more limited relationship with their company compared to full-time workers, and are arguably less connected to their company than gig workers who work continuously for the same online platform or hirer. When even part-time and

¹¹ ECO s 40.

¹² ECO s 2.

¹³ ECO s 5.

temporary workers are entitled to insurance and compensation, the law should be reformed to extend such protections to gig workers.

3.2.2. Channels of Redress

Employees and employers in Hong Kong have the option of resolving their disputes at the Labour Tribunal, which hears claims arising out of the EO, MWO and Apprenticeship Ordinance (Cap. 47).¹⁴ This includes cases related to due or unpaid wages, severance payment, payment for rest days, etc. The Labour Tribunal is a preferred option for many employees not only due to its low cost but also because the hearing is conducted in an informal manner¹⁵. With no legal representation allowed during the proceedings, possible ‘inequality of arms’ between the employee and the employer is greatly reduced.

On the other hand, gig workers cannot bring their claims to the Labour Tribunal.¹⁶ While they can still formally sue online platforms or their hirers where payment issues arise, the complex and costly procedures of bringing a case to court is a great deterrent for gig workers to enforce their rights. The exclusion of gig workers from an affordable channel of redress illustrates problems with the status quo and calls for reforms in the current labour protection laws for gig workers.

4. Overseas Jurisdictions

In drafting a proposal on how the law could be reformed, reference could be drawn from legislation in overseas jurisdictions. Two main issues have been

¹⁴ Labour Tribunal Ordinance (Cap. 25) s 7, Sch.

¹⁵ *Ibid.*, s 20.

¹⁶ *Ibid.*

identified by foreign jurisdictions: (1) the classification of gig workers and (2) the rights granted to gig workers. The following is a summary of the approaches taking by different jurisdictions in handling these two issues. The jurisdictions chosen in this essay are either forerunners in the realm of gig worker protection or share similarities and connections with Hong Kong.

4.1. The United Kingdom

Different from the ‘employee/self-employed’ dichotomy in Hong Kong, there are three main employment categories in the U.K.: ‘employees’, ‘workers’ and the ‘self-employed’. Aside from these three categories, other legal categories such as ‘bogus self-employed workers’ and workers with ‘personal service companies’ exist.¹⁷

Employees enjoy a wide range of rights, including annual leave, national minimum wage, protection from wage deductions, whistleblowing rights, working time rights, part-time workers rights, written particulars of employment, maternity/paternity/adoption leave, unfair dismissal rights, redundancy rights, right to request flexible working, notice periods, protection from dismissal on the transfer of a business, unpaid parental leave, fixed-term employee rights.¹⁸

Intended to be an “intermediate category” between employees and the self-employed,¹⁹ workers enjoy limited rights, including annual leave, national minimum wage, protection from wage deductions, whistleblowing rights, working time rights, part-time workers rights²⁰.

¹⁷ Doug Pyper, *Employment Status* (House of Commons Library Briefing Paper CBP-8045, 2018) (2018) <<https://researchbriefings.files.parliament.uk/documents/CBP-8045/CBP-8045.pdf>> accessed December 2021.

¹⁸ *Ibid.*

¹⁹ *Byrne Brothers (Formwork) Ltd v Baird* [2001] 9 WLUK 209 para 17.

²⁰ Pyper (n 17).

Self-employed persons are largely excluded from most labour rights and protections in the U.K..

Following the decision in *Uber BV v Aslam*,²¹ ride-hailing drivers are classified as workers instead of self-employed persons. This classification is likely to extend to gig workers working under other ride-hailing and delivery platforms such as Lyft and Deliveroo, as well as gig workers whose services are “tightly defined and controlled” by online platforms or their hirers.²²

Future developments in labour protection are foreseeable in the U.K.. The Status of Workers Bill has been introduced in the House of Lords in 2021, seeking to expand statutory employment rights to all employment categories except the self-employed.²³ Should the Bill be passed, present distinctions between workers and employees would be removed and the burden of proof would be on the employer to show that the person engaged was not in a contract of employment.²⁴

4.2. The United States

The ‘employee/self-employed’ dichotomy is also in place in the U.S., with the Fair Labour Standards Act determining the employment status of the individual.²⁵ States enjoy the freedom to classify which category gig workers belong to and to determine which rights should be enjoyed by employees and self-employed workers. As the gig economy thrives in the U.S., states have adopted various approaches to address labour protection for gig workers. This essay draws attention to the approaches adopted by two states: California and Washington.

²¹ [2021] UKSC 5.

²² *Ibid.*, para 101

²³ Status of Workers HL Bill (2021-22)

²⁴ *Ibid.*

²⁵ Fair Labour Standards Act § 203(e)

4.2.1. California

California's approach is to expand the definition of employee to include gig workers. Assembly Bill No.5 is introduced, codifying the 'ABC Test' introduced in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles County*.²⁶ Applying the ABC Test, an individual will only be classified as a self-employed person or independent contractor if all 3 conditions below are satisfied:²⁷

(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.

With the ABC Test in place, the definition of employees is clarified and widened. Gig workers are now entitled to the same level of labour protection afforded to employees. Assembly Bill No.2257 is further introduced to exempt certain occupations and industries from the effect of Assembly Bill No.5.

However, California's current legal position as to gig worker's rights has been muddled by ongoing disputes. Major online platform companies had voiced opposition against Assembly Bill No.5 and submitted Proposition 22 as an alternative, suggesting app-based gig workers should be classified as independent

²⁶ 4 Cal. 5th 903 (2018)

²⁷ Assembly Bill No.5 s 2

contractors with additional rights.²⁸ The Proposition was voted and passed by California citizens but ruled unconstitutional in *Castellanos v. California*,²⁹ which is now pending an appeal.

4.2.2. Washington

Washington has followed California's ABC Test in its classification of gig workers by incorporating it into House Bill No.2812,³⁰ which concerns the determination of worker benefits and employer obligations based on a worker's status.³¹

Besides incorporating the ABC Test, House Bill No.2812 also introduces the idea of portable benefits through which business entities, including online platform companies, are required to contribute funds to benefit providers which will then provide benefits to workers regardless of employment status.³² Essentially, gig workers are covered by this fund. Industrial insurance and other benefits such as health benefits, retirement benefits and paid time-off are funded out of the contributions.³³

4.3. Australia

In Australia, individuals are also classified either as 'employees' or 'self-employed'. In *Franco*,³⁴ delivery riders working for the online platform

²⁸ California Legislative Analyst's Office 'Propositions on the November 3, 2020 Ballot: Proposition 22' (2020) <<https://lao.ca.gov/BallotAnalysis/Proposition?number=22&year=2020>> accessed December 2021

²⁹ RG21089725 (2021).

³⁰ HB 2812 s 14(7)(a).

³¹ *Ibid.* p.1.

³² *Ibid.* s 3.

³³ *Ibid.* s 4.

³⁴ *Franco* (n 9).

Deliveroo are classified as employees. This decision was reached mainly based on the *de facto* control Deliveroo possessed over its riders,³⁵ potentially opening the door to possible classification of gig workers as employees within the ‘employee/self-employed’ dichotomy.

4.4. European Union

The E.U. does not regulate the classification of employment categories by its member states and allows its member states to develop their own labour protection laws. As a result, gig workers across the E.U. enjoy different degrees of labour protections.

The Directive on Transparent and Predictable Working Conditions³⁶ (“**Directive**”) is an attempt to unify the minimum labour rights and protections provided to E.U. workers. Introduced in 2019, the Directive extends certain labour rights and protections to all workers, including ‘non-standard’ workers such as on-demand, casual and platform workers but excluding workers whose predetermined and actual working time is equal to or less than an average of three hours per week.³⁷ Gig workers are within the wide scope of the Directive.

Employers of all workers are obliged to provide information about the employment relationship, including the identity of parties in the relationship, the place of work, work description, relevant dates, amount of remuneration, etc.³⁸ Minimum requirements relating to work conditions are imposed, including the maximum duration of any probationary period, right to parallel employment,

³⁵ *Ibid.*, at para 139.

³⁶ Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union

³⁷ *Ibid.*, art 1(2)-(3).

³⁸ *Ibid.*, art 4

right to mandatory training, right to collective agreements, etc.³⁹ Moreover, E.U. member states are required to establish accessible channels of redress and are encouraged to establish a timely and effective settlement mechanism if possible.⁴⁰

Member states are required to transpose the Directive into national legislation by 1 August 2022,⁴¹ implying changes in labour protection laws may soon be seen in European countries.

4.5. Singapore

The Singaporean position is similar to that of Hong Kong. Individuals are classified either as ‘employees’ or ‘self-employed’, and statutory protections in the Employment Act 1968 are only extended to employees who have entered into or works under a contract of service with an employer.⁴² Gig workers are not within the definition of ‘employees’ under the Employment Act and lack access to medical, accident, and earnings protection.⁴³

Reforms are foreseeable in the near future as the Prime Minister promises to look into protections of gig workers.⁴⁴ Legislative recommendations are expected to be published by the second half of 2022.⁴⁵

³⁹ *Ibid.*, arts 8-14.

⁴⁰ *Ibid.*, arts 15-16.

⁴¹ *Ibid.*, art 21.

⁴² Employment Act 1968, s 2

⁴³ Sharanya Pillai, ‘Big Questions over Gig Worker Welfare in Singapore’ *The Business Times* (Singapore, 24 August 2021) <<https://www.businesstimes.com.sg/garage/big-questions-over-gig-worker-welfare-in-singapore>> accessed January 2022.

⁴⁴ Tham Yuen-C, ‘Advisory committee on gig workers does not rule out laws to protect workers’ *The Strait Times* (Singapore, 15 September 2021) <<https://www.straitstimes.com/singapore/politics/advisory-committee-on-gig-workers-meets-for-first-time-does-not-rule-out>> accessed January 2022.

⁴⁵ *Ibid.*

5. Proposed Reform

The proposed reform addresses the ‘mixed’ nature of work performed by gig workers. On one hand, labour rights and benefits afforded to gig workers should reflect their differences with self-employed persons and independent contractors. On the other hand, labour rights and benefits should not be too generously granted as it would diminish the appeal of gig workers compared to traditional employees in the labour market.

5.1. Introducing the ‘Intermediate Worker’ Category

On the issue of classification, Hong Kong should create the ‘intermediate worker’ category to introduce more flexibility to the current ‘employee/self-employed’ dichotomy instead of widening the definition of employees.

A separate ‘Intermediate Workers Ordinance’ may be enacted as an alternative for individuals not within the scope of EO, ECO and other employment-related legislation. Those who have failed to establish an employee status could argue for a limited variety of rights under the Intermediate Workers Ordinance. For the purposes of the Ordinance, ‘employer’ includes parties who have entered into a contract of service with the intermediate employee.

To establish an ‘intermediate worker’ status, this essay proposes an integration of the U.K. limb (b) worker test and the California ABC Test. The individual seeking to assert his rights against an alleged employer must first prove that he worked under a contract within the scope of s.230(3)(b) in the U.K. Employment Rights Act 1996.⁴⁶ The burden of proof is then shifted to the alleged employer to prove

⁴⁶ “any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose

that the individual is not an intermediate worker. To do so, the alleged employer must satisfy all three limbs of the California ABC Test.

With the reform in place, gig workers will likely fall under the ‘intermediate worker’ category, which accurately reflects the actual nature of their work.

Compared to widening the definition of employees, the introduction of ‘intermediate workers’ allows online platforms and hirers of gig workers to gradually adapt to the newest legislation and adjust their costs accordingly. This reform also acknowledges differences in the nature of gig workers and employees, thereby maintaining the attractiveness of gig workers in the labour market. Widening the definition of employees has the effect of making some rights universally applicable and may lead to undesired consequences.

Past articles have suggested that creating an ‘intermediate worker’ category may lead to previous employees being reclassified as intermediate workers, and hence losing their entitlement to labour rights and protections they had originally enjoyed.⁴⁷ The proposed reform plugs this possible loophole by framing the Ordinance as applying only to those who had not entered work through a contract of employment, hence preserving the employee status for original employees. Those who wish to bring claims in relevant EO, ECO, MWO and MPFSO are still subject to the same common law test of overall impression in *Poon Chau Nam*⁴⁸.

5.2. Extension of Labour Protection to Intermediate Workers

status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual; and any reference to a worker’s contract shall be construed accordingly.”

⁴⁷ Andrew Stewart and Shae McCrystal, ‘Labour Regulation and the Great Divide: Does the Gig Economy Require a New Category of Worker?’ (2019) 32 Australian Journal of Labour Law, 4

⁴⁸ *Poon* (n 5)

Moving on to the extension of labour protection to gig workers belonging to the ‘intermediate worker’ category under the proposed Intermediate Workers Ordinance. This essay proposes a ‘safety net’ approach in extending rights and benefits to intermediate workers. Basic rights and protections should be provided to shield gig workers when accidents or instances of injustice occur. Other additional rights should be reserved to traditional employees.

This approach is supported by several factors. Firstly, the interests of intermediate workers are of utmost importance. This includes not only which rights and benefits they wish to enjoy, but also the extent of which the provision of new rights and benefits will hinder their competitiveness in the labour market. Secondly, the interests of employers within the meaning of the proposed Intermediate Workers Ordinance are also crucial in devising a feasible legal framework since they are the main providers of labour protection. Thirdly, the socio-economic circumstances of Hong Kong should also be considered. Hong Kong is not a welfarist city and granting rights too generously will hinder the development of the local gig economy. Lastly, developments in neighbouring countries should also be considered. Singapore, one of Hong Kong’s major competitors, has not yet extended labour rights and benefits to the class of workers protected in the proposed Intermediate Workers Ordinance. Introducing radical changes to the labour protection landscape may not be the most beneficial to Hong Kong’s image in the eyes of international businesses.

The following addresses five areas of labour rights and whether they should be extended to the new category of intermediate workers.

5.2.1. Channel of Redress

Amendments to the Labour Tribunal Ordinance should be made to include claims arising from the breach of terms arising by force of the Intermediate Workers Ordinance. This extends the timely and cost-effective method of redress to intermediate workers and is beneficial to the pursuit of justice by those who are wronged by their employers.

5.2.2. Insurance and Compensation

It is proposed that the portable benefits system should be applied to Hong Kong's intermediate workers. The system will provide intermediate workers with basic work-related insurance, as well as compensation when work-related accidents affect intermediate workers' livelihood.

Since remuneration for intermediate workers is normally provided at piece rate, it is suggested that contribution made by employers of intermediate workers should be based on the number of service transactions completed by the worker. It is proposed that 3-5% of the total charge collected from consumers in a service transaction should be pooled into the portable benefits system. This range is reached with reference to the existing portable benefit system in the Washington state.⁴⁹

A board similar to the Employees Compensation Assistance Fund Board may be established to administer the purchase of worker's insurance and distribution of compensation for work-related injuries. Disputes related to the amount of insurance can be brought to the Labour Tribunal.

Compared to the alternative of extending compulsory insurance to intermediate workers, this option allows proportionate contributions to be made by online

⁴⁹ Legislative Council Secretariat Research Office (n 8), para 4.17

platforms and hirers of intermediate workers. The amount of contribution varies according to the number of transactions conducted by intermediate workers and is hence a just and reasonable one.

5.2.3. Minimum Notice Period of Change in Standard Contractual Terms

As recognised in the Directive, predictability of working conditions is a minimum protection which should be afforded to all workers. In a contract of employment, employers cannot unilaterally vary the terms of the contract. Working conditions, payment, entitlement to benefits and other labour rights are stipulated expressly in the contract or impliedly by statute. An employee is entitled to bring a claim against his employer upon breach of employment terms.

Unlike employees under the EO, intermediate workers enter into a new contract with their employers every time they are assigned a new task. However, these contracts are likely to be standard form contracts containing identical terms, henceforth referred as “standard contractual terms”. By continuously entering into standard form contracts with the same employer, intermediate workers are in a *de facto* contract of employment with the employer.

It is proposed that a minimum notice period should apply when there is a change in standard contractual terms. Where an intermediate worker has worked continuously on the same online platform or for the same hirer for six months⁵⁰ and the average working time is more than three hours per week,⁵¹ notice of changes in standard contractual terms should be given no less than one month before actual change is implemented. The proposed length of the minimum notice

⁵⁰ Based on the general maximum probation period in E.U. states

⁵¹ Based on the scope of ‘non-standard’ workers in the Directive

period draws reference from the length of notice required to terminate an employment contract.⁵²

Noting the flexible nature of intermediate work, the difference between intermediate workers and employees is maintained in the proposal. Unlike employers in the EO, employers of intermediate workers are not required to obtain consent or negotiate with intermediate workers. They still enjoy the freedom to amend their standard contractual terms and offer it to new intermediate workers. The only new restriction is the requirement of giving notice, which allows more time for intermediate workers currently working for the platform to adjust to new working conditions and make plans accordingly.

5.2.4. Minimum Wage

Overseas jurisdictions such as the U.K. extends the minimum wage requirement to all workers except those in the self-employed category. However, this essay proposes that the MWO should not be extended to cover intermediate workers for two reasons.

Firstly, the minimum wage requirement is incompatible with the nature of intermediate workers. Intermediate workers are characterised by their relative flexibility in working hours compared to traditional employees and normally have piece rate arrangements. It is difficult to calculate the exact hours when the worker is engaged in work. Extending the minimum wage requirement, however, has the effect of changing the remuneration system into a time rate one, posing uncertainties in the calculation of costs and increasing the costs of employers of intermediate workers.

⁵² EO s 6

Secondly, as suggested in previous research, introducing minimum wage for intermediate workers could potentially deprive them of the opportunity to earn higher award rates.⁵³ Employers of intermediate workers may provide workers with higher rates for working outside normal working hours. Extending minimum wage may have the reverse effect of encouraging employers to lower the remuneration rate to the minimum wage level.

5.2.5. Entitlement to Leave

Entitlement to leave is mostly inapplicable to the work arrangements of intermediate workers since they already enjoy the flexibility of choosing which dates to take work.

6. Conclusion

Labour protection for gig workers in Hong Kong is inadequate. Gig workers are classified as self-employed persons under the present ‘employee/self-employed’ dichotomy and are hence not entitled to most labour rights and benefits.

The proposed reform introduces the new employment status category of ‘intermediate workers’ through the ‘Intermediate Workers Ordinance’. Gig workers are likely to be covered by the definition of ‘intermediate workers’ after applying the test of the existence of a contract and the California ABC Test. Through this Ordinance, intermediate workers enjoy a right bring their claims to the Labour Tribunal, enjoy limited insurance and compensation, and receive notice before actual changes are made to their employers’ standard contracts.

⁵³ Stewart and McCrystal (n 47)

As the gig economy expands, development of labour protection law for gig workers in Hong Kong is urgently needed. It is hoped that gig workers could one day enjoy the rights and benefits they are justly entitled to.

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