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

A. Introduction

In light of deindustrialisation and the rise of the "service economy", employers have been demanding greater flexibility and variety in employment contracts. [1] Gig worker is one of the most common atypical working arrangements in this trend, which generally refers to individuals who take up tasks on-demand and get remunerated on a per-task basis.[2] The work is usually digitally mediated through a platform or digital base.[3] However, as seen in the city's few recent strikes and protests, these workers are complaining of insufficient legal protection.[4] This is largely due to the existing labour rights framework which was built based on traditional definitions of employment and fails to accommodate the atypical employment relationships. The diversity of forms of employment inevitably brings uncertainties to the law in the labour economy, and most importantly leaves the boundaries of employment rights and responsibilities opaque.

This essay attempts to illustrate that the law on determining employment status is outdated and ambiguous, leading to an unsatisfactory labour protection of gig workers in Hong Kong, and hence in an urgent need of reform.

B. Overview of the Current Position

B.1 Test for employment status

In order to determine the extent of labour protection gig workers are entitled to at present, one should first figure out the employment status of gig workers. In Hong Kong, the employment statuses are generally in simple dichotomy: (1) employee and (2) independent contractor.[5]

According to section 2(1) of the Employment Ordinance (Cap. 57) ("**the EO**"), "employee" means a person to whom the Employment Ordinance applies,[6] that is under a contract of employment by virtue of section 4,[7] in contrast to "independent contractor" that is under a contract for employment. As the terms are rather ill-defined in the statutes, one may refer to the common law for a better understanding of the distinction of the two statuses.

It is well established that there is no one uniform test for determining whether a person is an employee or an independent contractor. It is a question of fact and the worker bears the burden of proof that he/she is an employee on a balance of probabilities.[8] As established in the landmark case of *Poon Chau Nam v Yim Siu Cheung* at [18] per Justice Ribeiro PJ, "the modern approach [...] is [...] to **examine all the features of their relationship against the background of the indicia of employment** [...] with a view to deciding whether, as **a matter of overall impression**, the

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[1] H. Collins, K. D. Wsing, A. McColgan, *Labour Law* (2nd edition) (Cambridge: Cambridge University Press, 2019), p. 169

[2] S. A. Donovan, D. H. Bradley, and J. O. Shimabukuru, "What Does the Gig Economy Mean for Workers?" (2016), *Cornell University ILR School*.

[3] J. Woodcock and M. Graham, *The Gig Economy: A Critical Introduction to Platform Work* (London: Polity Press, 2019).

[4] RTHK, "Strike showed lack of protection for gig workers", 22 November 2021.

[5] S. G. Halsbury, *Halsbury's Law of Hong Kong,* Volume 24: Employment, para 145.002

[6] Section 2(1) of the EO.

[7] Section 4 of the EO.

[8] *Yeung Tin Sang v The Brothers Co* [2001] HKEC 1493.

relationship is one of employment" on a case-by-case basis. [9] The approach should be "nuanced rather than mechanical". This test sometimes leads to a balancing exercise with strong factors for and against employed status. The courts will usually consider a myriad of factors, including but not limited to: (1) the employer's degree of control over the procedures, working time and method;[10] (2) who provides the tools and equipment;[11] (3) who is responsible for insurance and tax;[12] (4) whether the individual can delegate work;[13] (5) the degree of financial risks and profits taken by the parties;[14] and (6) whether the worker was properly regarded as part of the employer's organisation.[15] Mutuality of obligations is heavily considered as well.[16]

The courts will look at the substance rather than the form of the relationship, and the label the parties applied to the employment contract is not decisive.[17] Nevertheless, it has been agreed that the fact-sensitive question of employment status cannot be easily answered, which lawyers and courts are often confused about as well.[18]

B.2 Available labour rights and protections

While there are many statutory labour rights available in Hong Kong, they are mostly only applicable to individuals with the "employee" status. In other words, if gig workers are classified as "independent contractors", they will unfortunately not be entitled to the labour protections listed below.

Basic protection under the EO

Under the EO, every employee working under a contract of employment, irrespective of their working hours, are entitled to basic protection including but not limited to payment of wages, restrictions on wage deductions and granting of statutory holidays.

For employees employed under a continuous contract (i.e. has been employed continuously by the same employer for four weeks or more, with at least 18 hours worked in each week), they are further entitled to additional benefits such as rest days, maternity and paternity leave, paid annual leave, sickness allowance, severance payment and long service payment. There are also statutory provisions enacted to supplement the common law to protect employees against unreasonable dismissals.

Other statutory protections

Besides, there are a number of labour protection provisions only available to employees in other statutes.

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[9] *Poon Chau Nam v Yim Siu Cheung* [2007] 1 HKLRD 951.
[10] *Wong Wai Ming v FTE Logistics International Ltd* [2008] HKCU 1328.
[11] *Chan Sau Ying v Yuk Luk Sauna* [1995] HKLY 575.
[12] *Promo International Ltd v Chae Man Tock and Anor* [2018] HKCU 688.
[13] *Lee Chi Fai v Sunrise Knitting Factory Ltd* [1973] HKDCLR 61.
[14] *Leung Chun Pong v Cheng Man Tung* [2008] HKCU 931.
[15] *Wong Sham v Chiu Kung Hui and Joseph K A Chiu (t/a Hong Kong Industrial (Woodwork) Co* [1999] HKCU 1318.
[16] *Lee Ting-sang v Chung Chi-keung* [1990] 1 HKLR 764.
[17] *Chan Cheung Fong v Ng Wing Kwok* [1988] HKC 215.
[18] *Wong Ki v Shun Tak Electrical Mechanical and Air Conditioning Engineering (Hong Kong) Co Ltd* [2009] HKCU 541.

A worker's injury compensation can only be claimed against the employer if it arose in and out of employment under the Employees' Compensation Ordinance (Cap. 282). Only an employee has a statutory right to form a trade union or become a member or an officer of the registered trade union in accordance with the Trade Union Ordinance (Cap. 332) ("**the TUO**"). Self-employed persons or independent contractors are unable to enjoy the labour protection of minimum wage under the Minimum Wage Ordinance (Cap. 608) ("**the MWO**"), and the Mandatory Provident Fund membership and the protection under the Mandatory Provident Fund Schemes Ordinance (Cap. 485) as well.

Besides, although general discrimination on the basis of sex,[19] disability,[20] race,[21] and family status[22] is forbidden, individuals not working under the employee status are unable to be protected by the specific provisions made in the ordinances under the employment context. Their proof of discrimination are hence more difficult.

C. Existing Problems

As seen above, while the test for employment status has been constructed and supported by a strong group of cases, it still fails to afford atypical workers such as gig workers sufficient labour rights and statutory protections. The existing problems can be summarised in the following three areas.

C.1 Uncertainty of employment status with an outdated test

Despite the importance of determining a worker's employment status, not much effort has been seen in the recent decade to update the employment status test with regard to the changing circumstances.

The simple bipolar division between an employee and an independent contractor made by the test fails to acknowledge the wide variety of employment relationships, especially in the modern fast-changing economy. With the freedom of contract, parties are ideally able to create contractual relationships with diverse and customised terms that they find mutually beneficial, in particular regarding rights and responsibilities of both parties. Hence, the law in fact supports a spectrum of employment relationships, with varying risks and benefits allocated between the parties.[23]

New work arrangements, such as agency workers, zero-hours workers and gig workers, are examples of special employment relationships evolved to adapt to the changing economy and the employers' call for higher flexibility and efficiency.[24] The workers in these work arrangements usually give up a scheduled and formal employment relationship for flexible working hours and freedom to choose work and decide how to work. It is non-disputable that they have a higher degree of control when performing their jobs.

While it is unavoidable that the classification exercise would be very fact-sensitive and complicated, it is clear that the present employment status test is unable to reflect the borderline features of the gig workers and its distinctions from traditional employees and independent contractors.[25] These

[19] Sex Discrimination Ordinance (Cap. 480).
[20] Disability Discrimination Ordinance (Cap. 487).
[21] Race Discrimination Ordinance (Cap. 602).
[22] Family Status Discrimnination Ordinance (Cap. 527).
[23] H. Collins, *Labour Law*, p.200
[24] C. Stanworth and J. Stanworth, "Managing an Externalised Workforce: Freelance Labour-Use in the UK Book Publishing Industry" (1997) 28 *Industrial Relations Journal* 43.
[25] H. Collins, *Labour Law*, p. 200.

relationships demand a more tailored and diverse categorisation in order to correspond the rights and responsibilities of the parties with the characteristics of the relationships. Rigidly attempting to classify them into either of the dichotomy would be oversimplifying the sophisticated employment relationship dynamics, and causing unfairness to all parties.

Moreover, the inevitable difficult application of the employment status test also brings uncertainties to the gig workers. Under the current law, the legal classification of a work relationship is solely a matter of "overall impression" and subject to the discretion of the courts or the tribunal. It is possible that the classification of two similar contracts could vary due to very minor differences such as whether the individual is required to wear uniform or if he/she brings his/her own tools to work, leaving huge uncertainties in the law, not to mention gig workers. Without proper guidance in the legislation and lack of case laws in Hong Kong, it remains unclear how these work relationships are legally classified in employment law.

C.2 Inconsistent term definitions and unorganised labour protection

With distinct legislative intent and social problems the Legislature intended to address, different pieces of legislation may adopt different terms or even different definitions of the same term. This causes the labour legislations unorganised with varying scopes of protection and target, and also brings in inconsistencies in the use of terms.

For instance, one may compare the MWO and the Factories and Industrial Undertakings Ordinance (Cap. 59) ("**the FIUO**"). The MWO is a piece of legislation that concerns the basic protection of wages and operation of the labour market. In contrast, the FIUO was legislated to govern the health and safety of factories and industrial undertakings, in particular trying to avoid personal injuries at the workplace. While the former defines "employee" as "an employee under a contract of employment [...]",[26] the latter adopted the term "persons employed at an industrial undertaking"[27] instead to make the scope of the relevant sections wider. The difference in the scope is justified with different statutory purposes in mind, in which the former addresses the failures of the labour market, while the latter deals with the general personal injuries that may happen to anyone on the premises.

On the other hand, ordinances may also define "employee" differently. The TUO defines "employee" wider as "any person who has entered into [...] a contract with an employer [...], whether it is a contract of service or apprenticeship or a contract personally to execute any work or labour"[28] to cater their respective statutory purposes in question.

As illustrated above, the labour legislations in fact work independently with its scope specifically defined according to the legislative intentions. There is no uniformity in the coverage of labour protection, and the scope of each legislations are often imprecise and uncertain as well. While it is agreed that ordinances shall be drafted and enacted to tackle a specific issue, the inconsistencies in the statutes has further blurred the complex employment statuses classification, and adds difficulty to the personal scope of employment law.[29]

C.3 Insufficient labour protection for vulnerable atypical workers

[26] Section 2 of the MWO.
[27] Section 6B of the FIUO.
[28] Section 2 of the Labour Relations Ordinance (Cap. 55) and the TUO.
[29] H. Collins, *Labour Law*, p. 199.

Having illustrated how the current law is outdated and inflexible, the employment status of the gig workers is therefore left blank with ambiguity. While it awaits for the Legislature or the courts to provide an authoritative answer, employers have been exploiting this uncertainty and trying to disguise employees with the status of independent contractors to avert the responsibilities of labour law.

The possibility of exploitation of these atypical workers essentially roots from the nature of a contractual model in employment law. Due to the workers' need for securing an income, employers generally have a stronger bargaining power, and workers will be reluctant to quit their job and unwillingly accept harsher terms and conditions. It is not uncommon that employment contracts are provided by employers on a take-it-or-leave-it basis.[30] The concept of "freedom of contract" disguises the reality that employees have undertaken contracts and the terms out of no choice, and the employers have been dictating all the rules in the work relationship.

Particularly in the context of the gig economy, these atypical workers may have even less bargaining power as they are in a desperate need of employment due to their lack of skills and work experiences. As the employers and their lawyers carefully devise terms for the standard-form employment contracts provided, it is not common that these vulnerable workers are working under the bogus self-employed status, and are required to bear risks such as insufficient work or sickness. As case law and the employment status test develop, the employers will simply bring in more terms to prevent gig workers from gaining an employee status by carefully playing around the rules. As Elias J has correctly spotted, "armies of lawyers will simply place substitution clauses, or clauses denying any obligation to accept or provide work in employment contracts, as a matter of form, even where such terms do not begin to reflect the real relationship".[31]

To put flesh on the arguments' bones, one may refer to the examples of gig workers of food delivery platforms. While these gig workers supply their own motorbikes for delivery and have retained control over the working hours and delivery methods, which seem to suggest they are working as independent contractors like how the platform businesses labelled them, they are ultimately working under the direction of the platforms. They are also required to wear uniforms. The algorithms and schemes set up by the platforms are also designed to monitor and put control over their work.[32] Nevertheless, the platforms attempt to mask the relationship with carefully designed clauses and terms. Not only were the workers required to agree and warrant themselves as independent contractors, platforms made efforts to avoid suggestions of employment relationships as well. For instance, Deliveroo managers were told to say "Under the hourly fees system we offer riders hours to work [...]", instead of "Under the hourly pay system we assign drivers set shifts in the zones where we need them"[33]. The gig workers are hence likely working under sham contracts, and are deprived of the labour protections they should be entitled to. They receive no compensation when sustained injuries during work, or might be paid less than the minimum wage, not to mention the rights typical employees enjoy.

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[30] H. Collins, "Legal Responses to the Standard Form Contract of Employment" (2007) 36 *Industrial law Journal* 2.

[31] *Consistent Group Ltd v Kalwak* [2007] IRLR 560 (EAT); approved by Lord Clarke in *Autoclenz v Belcher* [2011] UKSC 41.

[32] M. Szeto, "Does Hong Kong need new laws to protect gig workers?" (2021), *Lexology*.

[33] House of Commons Work and Pensions Committee, *Self-employment and the Gig Economy*, Thirteenth Report of Session 2016-17, 1 May 2017, HC 847, 10.

Besides, these new atypical work arrangements like gig workers usually involve more than 2 entities, such as customer, platform and workers. Confusions may arise as to which entity should be held responsible for breach of statutory obligations, especially when the functions of an employer are split between two or more legal entities.[34] Platforms may present themselves merely as an agent for the workers or customers, thereby contesting their statutory obligations as an employer. This adds further misfortune to the gig workers.

Surprisingly, with all the problems analysed above and the trend of rising number of gig workers in Hong Kong, the government has stated it has no plan to extend labour protections towards self-employed persons.[35]

D. Possible Reform Options

As illustrated above, the uncertainty surrounding the employment status of gig workers and the insufficient labour protections they are currently entitled to urgently call for a law reform. By referring to the various approaches made by foreign jurisdictions, the reform options are categorised into three main groups as follows.

D.1 Develop new principles and reform the existing employment status test

Third employment status category: "workers"/"dependent contractors"

In order to better accommodate the wide variety of employment relationships, several jurisdictions have created a third employment status category that protects atypical workers by providing some basic rights.

In the UK, a third category, called "workers" or "limb b workers" are defined under section 230(3)(b) of the Employment Rights Act 1996 to include "any other contract [...], whereby the individual undertakes to do or perform personally any work or service for another party [...] whose status is not [...] that of a client or customer of any profession or undertaking carried on by the individual".[36] "Workers" are entitled to fewer rights than employees, such as minimum wage,[37] work time regulation[38] and trade union rights. The Court has opined that the "worker"/"employee" distinction is just a matter of degree.[39]

In the landmark case *Uber BV v Aslam*,[40] the Supreme Court agreed with the Employment Tribunal's finding that the contractual provisions labelling the workers as independent contractors "do not correspond with the practical reality", and the concept is "faintly ridiculous". On the other hand, deliveroo workers were held to be independent contractors due to the substitution clauses and the lack of personal service in the contract.[41] While the law is still developing, commentators and UK courts

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[34] J. Prassl, *The Concept of the Employer* (Oxford University Press, 2015), p.32.
[35] Research Office, Legislative Council Secretariat, *Information Note: Protection of labour rights of "gig workers" in selected places*, 26 May 2020.
[36] Section 230(3)(b) of the Employment Rights Act 1996.
[37] Section 1(2) of the National Minimum Wage Act 1998.
[38] Regulation 2 of the Working Time Regulations 1998.
[39] *Byrne Brothers v Baird* [2002] ICR 667 (EAT) at [17.5].
[40] *Uber BV v Aslam* [2021] UKSC 5.
[41] *R v Central Arbitration Committee* [2018] EWHC 3342.

have shown greater tendency to recognise labour protections for gig workers by recognising the inequality of bargaining power in the employment relationship dynamics.[42][43]

In Canada, the third category of workers are named as "dependent contractors". Similar to the UK developments, the group lies between employees and independent contractors based on a myriad of factors. Although the classification of gig workers is still unclear due to the paucity of law guidance, suggested by the fact that dependent contractors have the right to unionise under labour laws in the same way employees do in several provinces,[44] it is likely that gig workers would be found as dependent contractors.

Legal presumption

Another way to reform the employment status test could be done by adding a legal presumption of employee to the test, and the party asserting that the worker is not an employee would bear the onus to prove otherwise.

In California, the Legislature has codified the Supreme Court's landmark decision in *Dynamex Operations West. Inc. v Superior Court of Los Angeles County*,[45] which a worker is presumed to be an employee, unless the hiring entity can prove all three limbs under the "ABC test". The three limbs include: (1) the worker is free from the control and direction of the hiring entity in connection with the performance of the work [...]; (2) the worker performs work that is outside the usual course of the hiring entity's business; and (3) is customarily engaged in an independently established trade, occupation or business of the same nature as that involved in the work performed.

Also in South Africa, a presumption was made that if any one of seven typical features of "employment" is present, the relationship is presumed to be employment regardless of the form of the contract, and the presumed employer would bear the onus to prove otherwise.[46]

Likewise, in the Netherlands, the government has announced that it will consider a presumption of an employment relationship for gig workers, to strengthen the legal position of vulnerable workers.

By setting a legal presumption of employment status, it relieves the workers' burden of proof, and also reduces uncertainty of the law with a strong presumption in favour of the existence of employment. Attempts to create bogus contracts would be more difficult as well.

Codification of the employment status test

Having regard to the subjectivity and the uncertainty of the employment status tests, it has been suggested that a statutory test in a simpler, clearer and more coherent manner can be used. With a more transparent test and rules fully understood, there will be less room for sham contracts to play around the rules with labels. It also makes law enforcement such as punishment of parties who breached the statutory obligations easier.

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[42] S. Fredman, D. D. Toit, "One Small Step Towards Decent Work: *Uber v Aslam* in the Court of Appeal" (2019) 48 *Industrial law Journal* 2.

[43] J. Atkinson, H. Dhorajiwala, "*IWGB v RooFoods*: Status, Rights and Substitution" (2019) 48 *Industrial law Journal* 2.

[44] Section 1 of the Labour Relations Act, 1995, S.O. 1995, c. 1, Sched. A.

[45] *Dynamex Operations West, Inc. v. Superior Court of Los Angeles County*, (4 Cal.5th 903, 416 P.3d 1).

[46] Section 200A of the South African Labour Relations Act 1995.

The test when codified can be more precise by (1) including objective criteria or (2) having a precise structure based on a clear order or points based system.[47] The statutory test could also be a list of factors, subject to the courts' interpretation. For instance, Germany introduced a social security employment status test by combining a range of criteria. If an individual fulfils three out of the five conditions, he/she would be classified as an employee for social security purposes.[48]

However, codification of the common law tests may also backfire. With an exhaustive list of factors or a clear-cut objective test, it may fail to take into account important fact-sensitive factors that are not common in all cases. Besides, it will limit the court's flexibility to adapt to future societal changes such as new forms of employment, especially for a test that has undergone through changes regularly as the economy develops. A statutory test would also create a fixed target for the employers to work out ways to avert from the statutory obligations and lead to a tick-box exercise without carefully considering the facts and the reality, which eventually causes adverse impacts to the development of the law.

D.2 Extend certain labour protections towards gig workers

Other than completely reforming the employment status tests, labour protection can also be extended to gig workers on a separate basis. This ensures the workers a set of minimum rights and improves the transparency of the working conditions for the workers, and also avoids a vast change of the legal landscape which is usually costly and controversial.

The European Union issued a new Directive in 2019 to enhance protection for gig workers through the Directive by specifying a set of minimum rights for eligible workers. The Directive has then been responded to by national legislations of the member states. For example, France has adopted a pragmatic approach to empower the gig workers without the trouble to consider the controversial employment status issue. Self-employed platform workers in France have enjoyed a number of basic rights, such as (1) work insurance coverage; (2) receive continuing professional training; (3) establish and join a trade union since 2016.[49] Additional rights were extended to gig workers in the transport economy (eg. ride-hailing drivers) in 2019 such as (1) the right to disconnect from the service app without penalty; (2) the right to be provided with information on the distance of a proposed ride and the net minimal payment before each ride.[50] In the Netherlands, the Dutch government announced a minimum wage rate of €16 (HKD$138) per hour for self-employed persons in 2019 to ensure a subsistence level.[51]

D.3 Limited approved types of contracts

In some European countries, to address the uncertainty of employment status, employers are only allowed to use a limited number of approved types of contract. By then, one can precisely determine the employment status of each work arrangement, therefore fully enjoying the labour protection one is entitled to.

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[47] Department for Business, Energy & Industrial Strategy, the UK, *Employment Status Consultation*, February 2018, p. 28.

[48] *Ibid*., p. 29.

[49] European Agency for Safety and Health at Work, *Protecting Workers in the Online Platform Economy: An overview of regulatory and policy developments in the EU*, 2017.

[50] France Mobility Orientation Law.

[51] Forbes, *Dutch Government Plans To Set A Freelance Minimum Rate Of €16 Per Hour*, 25 June 2019.

However, this approach has obvious side effects as it greatly intrudes the freedom of contract and reduces the flexibility that employers have demanded. This would therefore disrupt their businesses and obstruct the economy's development, possibly causing unemployment. It should also be noted that there could be genuine individuals who value independence over security and labour protections and hence prefer the risks associated with self-employment.

E. Recommendations

E.1 Codification of a reformed employment status test

A reform of the employment status test is necessary for Hong Kong to catch up with the economic developments with diverse working relationships. As argued above, a binary distinction is unlikely fair to the parties in varying work relationships with different characteristics. It is proposed that Hong Kong should adopt the three categories employment status test similar to the UK to cater the workers employed in an atypical arrangement, such as gig workers, so as to strike a balance between labour protections and flexibility.

Moreover, the current employment status test has ignored the root cause of the vulnerability of the workers, which is economic dependence and imbalance bargaining position. While workers retain freedom in the manner of work and there is no mutuality in the contract, the fact that they are economically dependent on the company and would be unable to earn income if they did not abide by the company's directions suggests that they are also vulnerable to exploitation and abuse of bargaining power.[52] Rather than focusing on superficial facts such as provision of tools or uniforms, the courts and the Legislature should expressly consider the dynamics between the parties and take into account their respective bargaining powers. While the classification of employment status would inevitably be difficult, a reformed test would doubtlessly increase the courts' flexibility to appreciate the variety of work relationships and adapt to the new employment climate. By then, the employer's dominance in the employment relationships could be unveiled from the consensual agreement of a contract.

A legal presumption of the third category employment status with a reverse burden of proof would be important to reduce bogus contracts and relieve employees from evidential burdens as well.

While it is acknowledged that codification restricts future legal adaptations, for a jurisdiction lacking relevant case laws like Hong Kong, it would be able to efficiently deliver a timely and certain law reform, compared with a long wait for the development of common law tests. The rigidity can be reduced by remaining a high level codification of the classification tests, and reserving room for court's interpretation with reference to each case's facts.

In face of the uncertain allocation of responsibilities, the law should also take into account the new contractual frameworks and attribute responsibilities to the entity in the network that is in the best position to fulfil the relevant legal duties.[53]

E.2 Proper allocation of rights and responsibilities between the three categories

[52] J. O'Connell Davidson, "What Do Franchisors Do? COntrol and Commercialisation in Milk Distribution" (1984) 8 *Work, Employment and Society* 23.
[53] H. Collins, "Ascription of Legal Responsibility to Groups in Complex Patterns of Economic Integration" (1990) 53 *Modern Law Review* 731.

After classifying the work relationships, it is most importantly that appropriate rights and responsibilities are being allocated to the parties. Acknowledging that it is unreasonable to apply the same personal scope to all statutory labour rights, the Legislature can in fact take the initiative to carefully review all relevant labour legislations, and work towards a coherent and systematic law on labour protections.[54]

The statutory labour protections should share the same definition of the fundamental terms such as "employees", "workers". The Legislature can thereafter allocate labour protections accurately to the target groups in accordance with the statutory purpose. For example, discriminations in the labour market can only be eliminated by applying the relevant provisions to all groups of working individuals, including self-employed workers and professionals who are independent from other operating businesses. Basic labour rights that concern the operation of the labour market and prevention of abuse of managerial powers such as minimum wage, injury compensation and unfair dismissal should be extended from the traditional narrow definition of employees to economically dependent workers including gig workers.

F. Conclusion

Under the growing gig economy, Hong Kong should catch up with other jurisdictions to introduce clarity and certainty into the law of labour protection of gig workers. While the classification of employment status is a complicated exercise, a clear codification and a proactive attitude for legal reform would be the gateway for the vulnerable gig workers to receive the labour protection they deserve.

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[54] M. Freedlland, "From the Contract of Employment to the Personal Work Nexus" (2006) 36 *Industrial Law Journal* 1.