



Better welfare for delivery riders needed

THE economic impact of the Covid-19 pandemic in the form of lockdowns and movement restrictions had forced many businesses to lay off workers to lower their payroll as a result of a loss of income or revenue.

Of course, this is a classic case of involuntary unemployment.

Meaning to say, unemployment only resulted because of the pandemic as an externality and not from the dynamics internal to the business and production processes, i.e, market in the form of the relationship between wages and output/productivity.

For example, others who were not laid off within the same firm took pay cuts (which isn't equivalent to lower real wages) or accepted fewer working hours since these were meant to be temporary arrangements.

When the economy fully resumed, what we saw were wages rising not only due to the new minimum (nominal) wage legislation (RM1,500) but due to demand from the employers also (in certain sectors such as hospitality, food and beverage, plantations, etc).

In short, there was no wage rigidity (real and nominal which would be on the part of the workers) in the first place.

Consequently, this led to a sharp increase in the gig economy as most unemployed individuals shifted into working conditions and contracts characterised by flexibility and "informality" leading to the term "independent contractors".

The gig economy can be best defined as flexible or casual-type jobs (similar to zero-hour contracts that became popular in the UK in the aftermath of the macro-economic austerity measures post-Great Financial Crisis of 2008/09) that businesses offer to "independent contractors" for services that typically deploy online platforms and mobile apps to connect with customers.

So, while it's possible for a gig worker to "look" no different in terms of form (nature of work, i.e, activities) from a conventional employee, in substance (nature of employment, i.e, terms and conditions), there's a significant difference.

In Malaysia, delivery riders can well be considered the prominent feature or embodiment of the gig economy, not least because of their near-ubiquitous presence on our road landscape.

They come under what is known as p-hailing services, which are defined by the Transport Ministry as "food, drinks and parcel delivery using motorcycles".

According to the **Department of Statistics Malaysia (DOSM)**, there were approximately 772,900 Malaysians who lost their jobs by Q4'2020.

By the same token, DOSM statistics showed strong growth in gig economy employment the same year, with up to four million individuals engaged.

Indeed, the disruptive nature of job insecurity caused by the pandemic has subtly transformed the traditional workforce, which has been typically concentrated in terms of location/on-site as well as employment terms and conditions that are geared towards the collective (hence “collective bargaining”, for example), into a fragmented, disaggregated and atomistic labour market.

This tips the balance in favour of the employer or contract provider.

The passing of the Employment Act (2022)/EA 2022, which in effect provides legal recognition of gig workers, including and especially delivery riders who are considered the most vulnerable in terms of social protection given the nature of work and employment conditions, is a vital step in ensuring the security of their welfare.

But it is still insufficient to address the long-standing problems of job security, benefit entitlements and social protection.

As pointed out by researcher and gig economy specialist Edwin Goh of The Centre, despite the introduction of schemes such as the Socso work accident insurance, a voluntary retirement savings programme under the EPF via i-Saraan and a housing credit guarantee, none of these addresses the nature of the gig work platform which revolves around delivery fares, payment schedules, rating systems, etc.

Reviewing the impact of gig workers’ ‘employees’ status in Europe

First, let us review the situation in other countries with Europe as an example.

To rebalance the nature of the contract provider-contractor relationship, several European countries have taken the stringent step to legally recognise gig workers as “employees”. This, of course, has ramifications.

Following the legal recognition in Germany, the gig economy seems to have slowed down.

Berlin-based food delivery company Delivery Hero cited that the rising cost of riders had forced them to stop operations in six German cities.

In Spain, food delivery platform Deliveroo left the country altogether and this scenario could potentially stumble growth prospects of the gig economy not only in Spain but across Europe, especially when the policy issue of gig employment status was being looked into by the European Commission.

In December last year, the European Commission published its proposed directive (as one of the primary sources of EU laws) which seeks to ensure that gig workers employed under digital labour platforms (algorithmic management) are entitled to the same benefits as conventional workers by shifting the policy orientation towards the concept of “employer”.

In February 2021, the UK Supreme Court ruled that Uber drivers must be treated as employees and that they are entitled to social benefits.

According to Dr George Maier of the London School of Economics, for many years Uber in the UK had relied on offering a low-cost alternative to traditional taxis to support its rapid growth across new markets, but labour liabilities inevitably led to increased prices that would erode demand for Uber rides and reduce turnover as a result of status recognition of Uber drivers.

Reassessing the welfare of delivery workers in Malaysia

For the past few years, the government has introduced several policy initiatives for gig workers, with particular focus on delivery riders such as the Self-Employment Social Security Scheme, i-Saraan, e-Rezeki, e-Usahawan, etc.

Notwithstanding, the job security of delivery riders is still not properly addressed.

According to DOSM, in 2020, only 5% of the self-employed in Malaysia had enough (sustained) savings to last for at least three months.

This could partly account for Section 101C(1)(f) of the EA 2022, whereby any payment received at “regular intervals” and which constitutes the majority of the worker’s income would automatically make the person an employee.

The next step is to ask what more can be done to complement and supplement the provisions of the EA 2022 that impinge on the welfare of gig workers with a particular focus on delivery riders.

This is given that a) they constitute a significant and conspicuous presence and the familiar embodiment of the gig economy, b) the low-skilled nature of their job, and c) the majority continue to prefer flexibility not least due to better earnings prospects.

Therefore, the government must formulate specific legislation aimed at delivery riders, which balances flexible earning arrangements and permanent benefits and, by extension, the interests of both the “worker” and “employer” – all within the broader remit of the EA 2022.

In effect, the flexible working arrangements provided for under the EA 2022 (Sections 60P & 60Q) would be adapted specially for delivery riders under this new legislation.

An opt-out clause (from the EA 2022) under this special legislation should be allowed for delivery riders who don’t wish to be recognised as a conventional workers while still enjoying the benefits afforded.

A delivery rider should be able to enjoy the benefits of a conventional worker up to certain limits while retaining their pre-existing “independence”.

In other words, not full formalisation but semi-formalisation of the delivery riders’ employment terms and conditions, where only the benefits entitlement is formalised but not the nature of the working and earnings arrangements.

For example, delivery riders who want flexibility in terms of working hours and days (to concentrate on only certain working days which exceed the statutory working hours while leaving the rest of the week for family time and leisure) should be allowed to do so and simultaneously be entitled to some kind of benefits such as medical coverage (at least for in-patient treatment) and a mandatory employer contribution to EPF savings of not more than 5%.

Furthermore, the proposed legislation should also make it mandatory for delivery riders’ representatives to sit on the top management’s board to enable them to have a say.

In addition, there should be a provision for the establishment of a delivery riders' union representing them – moving beyond associations under the Societies Act (1966) but which would be completely distinct from the Trade Unions Act (1959) for obvious reasons.

This will also give legal recognition to the delivery riders' collective bargaining status.

Going forward, under the same proposed legislation, there should be a high-level gig workers' council comprising the Deputy Minister for Human Resources, who is also specially tasked to look after the welfare of delivery riders, representatives of the delivery riders' union, gig economy providers/employers or p-hailing and e-hailing services companies, employment lawyers and practitioners, etc.

This council should meet once every two years to review existing legislation and ensure that the balance of competing interests between the "employer" and delivery riders is continuously maintained.

These measures should foster a climate of trust and cooperation in the industry and prevent discontentment that would result in strikes or other disruptive actions that would damage business and consumer confidence.

In summary, having provided for the general framework and initial step in securing the welfare of gig workers under the EA 2022, with special reference to delivery riders, we should then move towards ensuring the particular rights of the latter via specialised legislation that allows for a repivoting (back) towards the interests of the employers with opt-outs allowing for flexible contracts but which are better protected and from stronger and more balanced bargaining relations.

<https://www.thesundaily.my/opinion/better-welfare-for-delivery-riders-needed-FL9841968>