

Better Than None? Hong Kong Government's Proposed Work Injury Compensation Scheme for Platform Workers

Hong Kong Labour Rights Monitor
Amplifying workers' voices from Hong Kong to the world

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Better Than None? Hong Kong Government's Proposed Work Injury Compensation Scheme for Platform Workers

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1. Introduction

The rise in platform economy has significantly transformed how work is organised and performed, blurring the boundary between dependent employee and independent contractor. Most if not all platform workers are (mis)classified as self-employed, hindering their enjoyment of the rights and benefits under labour laws. In Hong Kong, though the share of platform workers in the workforce is tiny compared with China or other advanced economies, addressing their (lack of) statutory protection is by no means secondary. There are growing public concerns over the protection afforded to platform workers, particularly after several riders, who were killed or seriously injured in work-related traffic accidents, received little or no compensation from the platform operators. Platform workers also staged several strikes and industrial actions to fight for better treatment in last few years, despite the tightening of political environments since the promulgation of the draconian National Security Law (NSL) in 2020. Responding to the demands of workers and labour groups, the Hong Kong Government agreed to study the way to strengthen the protection of platform workers and put forward in July 2026 a proposed statutory work injury compensation scheme for workers engaged by food and goods delivery platforms.

This policy brief gives a critical evaluation of the Government's proposal and makes suggestions for trade union's advocacy campaign for strengthening platform worker's statutory protection. Section 2 presents an overview of the situation of Hong Kong's platform workers. An official statistical report reveals that there were only 12,900 persons, or less than 0.4% of the working population, taking up paid platform work in food and goods delivery services. Meanwhile, an academic research finds that there is possibility of bogus self-employment in the contract arrangements of food delivery platforms. In Hong Kong, disputes over platform worker's employment status can only be settled through litigation, but relevant court rulings are so far inconclusive or even conflicting.

Section 3 outlines the key features of the Government's proposed legislative framework and discusses its major deficiencies. Most importantly, it is unclear whether a "platform work agreement" under the proposed legislation excludes a "contract of employment"; and if no, all platform workers regardless of their employment status could be deprived of the protection under existing labour laws, including the Employment Ordnance (EO) and Employees' Compensation Ordinance (ECO). The proposal's other shortcomings include work-related accidents occurred while waiting for orders are not covered; earnings from non-platform work are discarded when

calculating the amount of compensation; agency workers are excluded from protection; and legal provisions for platform operators' duty of care to their workers are not considered.

Section 4 makes policy recommendations for trade union's advocacy campaign. In addition to remedial measures to address the deficiencies of the Government's current proposal, this brief also suggests long-term policy options to close the regulatory gaps in the city's platform economy by consulting relevant international labour standards as enshrined in the Decent Work in the Platform Economy Convention, 2026 (No. 193). The recommendations include coverage of other types of platform work, protection against anti-union discrimination, right to fair remunerations and social security (such as sickness allowance, maternity pay and retirement benefits), regulation on algorithm management and access to the Labour Tribunal.

2. Situation of Hong Kong's Platform Workers

According to the International Labour Organization (ILO), digital labour platforms can be divided into two broad types: online web-based and location-based platforms.[1] The distinguishing features of the former are that internet technology enables work to be outsourced globally across borders and can be performed remotely from any location. The work or tasks commonly found on web-based platforms range from microtasks, such as transcribing a short video and checking data entries, to translation, graphic design, software or programming development, and even financial, accounting, legal and data analysis services. In Hong Kong, web-based platforms are almost invisible in policy deliberation, and little is known about who are engaging paid work on such platforms and what are their working conditions.

On location-based platforms, work is performed in a specified physical location and the services are mediated through a digital application. Ride-hailing and delivery services are among the most prevalent examples in these platforms. Public discussion on platform work in Hong Kong is primarily focused on location-based platforms;[2] yet, existing data sources remain insufficient to provide a comprehensive picture of location-based platform employment.

The Census and Statistics Department (C&SD) conducted a thematic survey on platform work between December 2023 and March 2024 and found that there were some 12,900 persons, or less than 0.4% of the total working population (excluding migrant domestic workers), engaging in the food and goods delivery digital platforms

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[1] International Labour Organization (2021) *World Employment and Social Outlook 2021: The role of digital labour platforms in transforming the world of work*, Chapter 2

[2] In this brief, unless the context requires otherwise, "platform worker" means a person engaging in paid work through on-location platforms.

during the 12 months before enumeration.[3] This figure is certainly an under-estimation of Hong Kong's total number of platform workers as the survey did not cover people taking up paid work on web-based platforms or those working for location-based platforms other than food and goods delivery, such as ride-hailing (which is currently operating on a legal grey zone), domestic work and home-care nursing service. Nevertheless, it is safe to suggest that the share of platform workers in Hong Kong is significantly lower than that in China or other advanced economies.[4] One of the reasons is the demand for food delivery and ride-hailing is normally lower in a small, densely populated city. Another possible reason is that Hong Kong's statutory protection afforded to employee is relatively poor compared with other advanced economies, there is little operational or economic incentive for employers to change their workers' employment status.

Most platform workers are labelled as independent contractors by the operators. A Chinese University of Hong Kong (CUHK) study finds that more than 80% of food delivery platform workers surveyed were engaged under a contract *for* service, yet nearly half of them believed that there was an actual employment relationship.[5] The study also shows that Foodpanda, a major delivery platform in the city, gradually enforced a transition from full-time employment contracts to contracts with hourly rates between 2014 and 2016, and toward piece-rate-based self-employment contracts between 2018 and 2020.[6]

Though the C&SD's thematic report does not disclose the respondent's employment status, there is evidence that platform operators had indeed exercised some forms of management control over their workers. More than three-quarters of respondents reported that there was a reward mechanism based on login rate, order acceptance rate or punctuality; while a similar proportion revealed that there was a penalty mechanism based on customer complaint or late delivery.[7] In view of the

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3 Census and Statistics Department (2025) *Thematic Household Survey Report No. 81* (www.censtatd.gov.hk/wbr/B1130201/B11302012025XX01/att/tc/B11302012025XX01.pdf)

4 By adding up the number of registered drivers and delivery workers disclosed by five major digital platforms in Hong Kong, the Research Office of the Legislative Council (LegCo) estimated that there were 114,000 platform workers, representing about 3% of the working population. This figure is very likely an over-estimation, as people may register for several platforms or are inactive after registration. Still, this figure is significantly lower than that in China (10.0%), South Korea (9.0%), EU (14.6%) and the US (10.1%). See Research Office of the LegCo Secretariat (2023) *Information Note IN17/2023: Protection of digital platform workers in Singapore and Spain* p. 1-3

5 Chris King-Chi Chan et al (2022) *Towards Fair Work: Working Condition of Grassroot Platform Labour in Hong Kong* p. 40-41

6 Note 5, Chan et al (2022), p. 39

7 Note 3, *Thematic Report No. 81*, Tables 4.3 & 4.4

above, there is strong possibility of bogus self-employment in delivery platform economy.

In Hong Kong, disputes over whether a person is worked as an employee or independent contractor can only be settled through litigation. However, the outcome of court ruling is unpredictable, and the legal proceedings are cumbersome and expensive, which could be prohibitive for most workers. The Labour Tribunal ruled in May 2023 for the first time that the employment status of delivery platform worker is in fact employee.[8] Applying the legal principles laid down in *Poon Chau Nam v Yim Siu Cheung* **[2007] 1 HKLRD 951**, the Presiding Officer held that there was employment relationship between digital delivery platform Zeek and the drivers it hired. The Tribunal's main considerations include: (i) Zeek had exercised dominant control over how the work was performed; (ii) Zeek developed and provided the online platform software, which was fundamental to the business, (iii) the claimants were prohibited from hiring substitutes and (iv) the claimants bore no financial risks and did not have an opportunity of profiting from sound management.[9]

However, in a District Court work injury compensation case in 2024, the presiding deputy judge ruled that a Deliveroo rider, who was injured in a work-related traffic accident in 2022, was an independent contractor.[10] The claimant had no legal representation, hindering his deliberation on the relevant facts and legal principles during the proceedings. While some of the reasonings behind the court's ruling are questionable, such as treating piece-rate pay structure as opportunity of profiting from sound management, and considering the mobile app as an intangible item and the cost of its provision as negligible, the most crucial point is that Deliveroo inserted a substitution clause into rider's contract, defeating the criterion of "personally performing work" in an employment relationship.[11] An authoritative ruling of the UK Supreme Court lucidly illustrates this point. In *Independent Workers Union of Great Britain v Central Arbitration Committee and another* **[2023] UKSC 43**, the court at para 69 agreed with the Central Arbitration Committee that Deliveroo's riders had a virtually unfettered power to hire substitutes, and held that "such a broad power of substitution is, on its face, totally inconsistent with the existence of an obligation to provide personal service which is essential to the existence of an employment relationship".

Shortly after Deliveroo ceased operation in Hong Kong, a group of couriers filed claims with the Labour Tribunal in April 2025 over unpaid compensation, including

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8 *Cheung Ka Yan & others v Kin Shun Information Technology (Hong Kong) Ltd & others*, **LBTC 3170/2022** (unreported)

9 Hong Kong Christian Industrial Committee (2023.06.12) *Zeek Case: Six Platform Couriers Won Employment Status Recognition at Hong Kong Labour Tribunal* (www.hkcic.org.hk/post/zeekcase?lang=en) [September 2026]

10 *Gurung, Sanjaya Man v Deliveroo Hong Kong Limited* **[2024] HKDC 1932**

11 Note 10, *Gurung v Deliveroo,* para. 58-59, 51 & 52-56

severance payment, and annual leave and statutory holiday pay. The proceedings were however stayed indefinitely on 11 August, pending the result of another District Court work injury compensation case against Deliveroo.[12]

Platform workers' ambiguous employment status undoubtedly constitutes a major hindrance to their access to decent work. The *CUHK study* finds that platform workers often experience three major disadvantages: first, unilaterally pay cut by platform operators and the opaque criteria for calculating remuneration; second, insufficient, or even no, compensation for work-related injuries; and third, unreasonable warnings or even punishments (such as restriction, suspension or termination of accounts) by platform operators without effective appeal mechanism.[13]

In the last few years, platform workers, mostly food delivery riders, staged several strikes demanding better remuneration and treatment. Their industrial actions had caught significant public attention, as public processions had become extremely rare amid the Government's tightening grasp on civil society activities since the implementation of the NSL on 30 June 2020. Foodpanda riders staged a two-day strike in November 2021 and successfully got the management to improve their working conditions. However, during the two strikes in 2022, Foodpanda took a tough stance and refused to negotiate with striking workers, and the industrial actions ended without any resolution.[14] Riders working for Keeta, a food delivery digital platform owned by Chinese tech giant Meituan, also staged a series of strikes in April and May 2025 in several districts, including Central, Kwai Chung, Tsuen Wan, Kowloon City, Tin Shui Wai and Yuen Long.[15] Again, their industrial actions gradually died down without achieving much.

3. Government's Proposed Work Injury Compensation Scheme

Hong Kong's platform workers have tried to fight for their rights through juridical means and collective actions, yet the outcomes were at best a mixed bag. At the core of platform workers lacking statutory protection is that most labour laws currently in force were drafted around the binary notion of employment status, which struggles to accommodate recent growth of certain flexible or non-standard forms of employment, including platform work. A change in existing labour legislation is thus indispensable.

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12 庭刊 (2025.08.11) *多名外賣員入稟勞審處向 Deliveroo 追討年假等* (bit.ly/4ozAIsc) (in Chinese) [September 2026]

13 Note 5, Chan et al (2022), Section 3

14 voice.cymru (2023.03.16) *Dispatch: The Rise and Fall of Hong Kong's Courier Strike* (voice.cymru/dispatch-the-rise-and-fall-of-hong-kongs) [September 2026]

15 Oiwan Lam (2025.06.14) *Hong Kong workers strike against the exploitation of Keeta, a food delivery platform* (globalvoices.org/2025/06/14/hong-kong) [September 2026]

After a long delay, the Hong Kong Government finally put forward a proposal in July 2026 to grant platform workers engaged in food and goods delivery services with statutory work injury compensation.[16] Under the proposed legislative framework, a "platform worker" is a person who has entered into a platform work agreement with a platform operator to engage in platform services and is managed by the operator in performing the tasks in platform work. Modelling Singapore's *Platform Workers Act 2024*, the framework defines "managing performance of tasks" as:

- the use of data on platform workers and service users by platform operators through automated means for:
  - determining whether platform workers are eligible for providing platform service, *or*
  - assigning tasks which platform workers may choose to perform, *or*
  - determining the remuneration of platform workers in each task; **and**
- the imposition of specific restrictions by platform operators on platform workers not required by laws, viz.:
  - requiring platform workers to comply with rules, guidelines, or standards when performing work; *or*
  - prohibiting or restricting platform workers from negotiating core service fees with service users; *or*
  - prohibiting or restricting platform workers from establishing their own clientele; *or*
  - prohibiting or restricting platform workers from choosing the number of working hours or the number of tasks they perform; *or*
  - giving incentives to or imposing penalties on platform workers in a systematic way on the basis of their performance.

The above definition is broad enough to cover virtually all platform workers, leaving operators little room for exploiting legal loopholes to evade their statutory obligations.

The proposed legislation will provide statutory compensation based on the "no-fault" principle for platform workers engaged in food and goods delivery services who suffer injury or death as a result of an accident arising out of and in the course of performing platform work. Compensation items will broadly mirror the provisions in the ECO, covering compensation for temporary incapacity (payment for work injury sick leave), permanent incapacity and death, as well as medical expenses, costs of prostheses and surgical appliances, and funeral expenses. "Earnings" of a platform workers will include amounts paid by the operator for platform work, such as service fees, tips received via the platform and cash bonuses under reward programmes. Expense reimbursements, direct tips from users and separately negotiated fees for additional services will be excluded. Platform operators will be required to notify the Labour Department of their business, take out mandatory work injury compensation insurance, report work injuries, and maintain records of platform workers' work and earnings.

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[16] Labour and Welfare Bureau (July 2026) *Legislating for Improving the Work Injury Compensation Mechanism for Digital Platform Workers*, LC Paper No. CB(1)839/2026(02)

The legislative framework is still being refined and important details remain to be finalised. Yet, there are several obvious deficiencies in the proposed framework, to which trade unions or labour organisations need to pay attention and explore remedial measures. Most importantly, it is uncertain whether a "platform work agreement" includes a "contract of employment" within the meaning of the new legislation. If yes, all platform workers regardless of their employment status could be deprived of the protection under existing labour laws, as the Government explicitly stipulates that the EO and ECO are not applicable to the platform work agreement concerned.[17]

Section 5 of Singapore's *Platform Workers Act 2024* provides that a platform work "agreement" does *not* include a contract *of* service. According to an online explanatory note, a person engaged under a contract *of* service with a platform operator is not a "platform worker" within the meaning of the *2024 Act* but an employee covered by the *Employment Act 1968*.[18] If a person is not under the management control of the platform operator, she or he is not a "platform worker" but a self-employed person under a contract *for* service. This legislative approach does not attempt to identify or clarify the genuine employment status of workers hired by digital platforms. The legal principles and tests laid down in common law cases will continue to apply in determining whether a platform worker is an employee. The sole purpose of creating a third category between employee and self-employed is to provide platform workers with an easier route to enjoy some statutory protections.

While the Government's failure to specify a "platform work agreement" does not include a "contract of employment" on its policy paper may be just a careless oversight, the possibility that this is indeed the policy intent cannot be ruled out given its official stance on platform worker's employment status. The Government has opposed to classify platform worker as employee since day one, claiming mandating employment relationship between digital platforms and their workers "may not be conducive to the development of the industry".[19] The Secretary for Labour and Welfare Chris Sun also misinterpreted Singapore's legislation, saying at the LegCo sitting on 28 November 2024, that "Singapore has recently established that platform workers engaged in delivery and ride-hailing services are entitled to certain legal protection, but at the same time, it has made it clear that their status is not [*sic*] that of an employee".[20] At the meeting of Legco Panel on Manpower dated 17 July 2026, the Secretary reiterated that "under normal circumstances, there is no employment relationship between platform workers and platform operators; if there were, we

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17 Note 16, Labour and Welfare Bureau (July 2026), para. 8

18 www.mom.gov.sg/employment-practices/platform-workers-act/platform-worker [September 2026]

19 Labour and Welfare Bureau (December 2023) *Protection for digital platform workers*, LC Paper No. CB(2)1132/2023(03), para. 16

20 Legislative Council, *Official Record of Proceedings: Thursday, 28 November 2024*, p. 271

wouldn't need to address this issue today."[21] Trade unions or labour organisations need to pay special attention to the concrete details of the new legislation: if a "platform work agreement" does not exclude a "contract of employment" *and* if there is an explicit provisions stipulating the EO and ECO (as well as other relevant labour laws) do not apply to a "platform work agreement", then a worker hired by a platform operator under a contract of employment will effectively be deprived of statutory protections under existing labour legislations.

Apart from the above-mentioned uncertainty, the Government's legislative framework also suffers from four major deficiencies. First, accidents occurred during the period when platform workers are waiting or competing for orders are not covered by the proposed work injury compensation scheme. Platform operators are given a free hand to decide whether to extend insurance coverage to the waiting period. This arrangement is unfair to workers. Once a platform worker logs onto the platform app, she or he is expected to be ready and willing to accept orders and is subject to the operator's monitoring and management control; for instance, a reward or penalty mechanism based on order acceptance rate is a common feature of delivery platforms. In the UK, the Supreme Court also ruled that all time spent by a driver logged onto Uber app, including time spent "on call" or "stand by", is "working time" within the meaning of the *Working Time Regulations 1998* and the *National Minimum Wage Regulations 2015*.[22]

Moreover, to meet instant response times, on-demand platforms rely on, and profit from, a huge excess of labour, usually standing by unpaid. As labour law professor Guy Davidov plainly puts it, "labour regulations are based on the assumption that those who enjoy the labour should be responsible for the fair treatment of employees working for their pleasure and profit",[23] there is no reason why allowing platform operators who enjoy the benefits of labour without taking up the responsibility, at the minimum, to pay work injury compensation in respect to accidents occurred during the period of waiting for order.

Second, if a platform worker also engages in full-time or part-time non-platform work, the earnings from such work will be excluded in the calculation of work injury compensation. Not a small number of full-time employees take up part-time platform work to supplement or complement their income. The C&SD's thematic report shows more than one-third of the respondents stated that platform work was not their main

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[21] Panel on Manpower of the Legislative Council, *Verbatim record of meeting: Friday, 17 July 2026*, p.2 [in Chinese, own translation]

[22] *Uber BV and others v Aslam and others* **[2021] UKSC 5** para. 132-138.

[23] Guy Davidov (2024) "Joint Employer Status in Triangular Employment Relationships", *British Journal of Industrial Relations 42:4*, p. 736

source of income.[24] An internal study of Deliveroo in 2023 also finds that half of the riders surveyed had another full-time job.[25] This provision undoubtedly leaves full-time employees with part-time platform work with insufficient work injury compensation. It is also at odds with the principle of maintaining a comparable level of living standards prior to the accident embedded in the method of calculating earnings in relation to accidents occurred during part-time employment under the ECO. Under section 11 of the ordinance, where an employee has entered into contract of employment with more than one employer, if the employee is working in her or his part-time employment at the time of accident, and she or he is incapacitated from performing the concurrent full-time and/or other part-time contracts, the employee's earnings should be computed by including all the earnings under such contracts.[26]

The Government also proposes that the requirement similar to the minimum monthly earnings under the ECO is not applicable in the calculation of periodical payments to platform workers during the period of work injury sick leave, claiming this can prevent the payments from being unreasonably higher than the earnings received from engaging in platform work. Under the ECO, the provision of minimum earnings applies to all part-time or casual employees regardless of their weekly working hours. The rationale behind is ensuring workers with a decent level of living standards during their temporary incapacity.

Third, a "platform worker" under the new legislation must have entered into a platform work agreement and be required to register a work account with an operator. In other words, a substitute, agency or dispatched worker performing platform services, who falls outside the meaning of "platform worker", is not entitled to the proposed work injury compensation. Deliveroo "voluntarily" deleted the substitution clause in rider's contract around mid-2024, after the Police and Immigration Department requested the platform to strengthen the security measures on account registration and logging in to prevent account holders from renting their accounts to illegal migrant workers.[27] Meituan, a Chinese tech giant that owns Keeta in Hong Kong, routinely outsources the recruitment and management of its riders to local agency employing units to avoid establishing any labour relationship with the persons performing its

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[24] Note 3, *Thematic Report No. 81*, Chart 3.7

[25] 香港 01 (2023.07.03) *戶戶送調查稱一半外送專員有正職* (www.hk01.com/財經快訊/915232) (in Chinese) [September 2026]

[26] Full-time employment means employment for not less than 40 hours during a minimum period of five days in any one week.

[27] Government Press Release (2025.06.18) *LCQ10: Crackdown on illegal workers* (www.info.gov.hk/gia/general/202506/18/P2025061800281.htm) [September 2026]

platform services.[28] While the city's two major food delivery platforms at present do not insert a substitution clause in platform worker's contract or hire workers through third-party labour dispatch agencies, there is no legal provisions prohibiting the platforms from doing so to avoid their statutory obligations.

Fourth, there is no provisions relating to platform operators' duty of care to their workers in the proposed legislative framework. In work injury scheme, compensation and prevention are logically and practically not separable. It is obvious that the most desirable way to reduce the cost of work injuries is to reduce their incidence in the first place. Keeta riders once complained that the "Grab the Task" alert feature distracted them on the road and increased the risk of traffic accidents.[29] It does not make policy sense that the Government introduces a work injury compensation scheme for platform workers without specifying operators' statutory duty on occupational health and safety. In Singapore, the *Workplace Safety and Health Act 2006* was amended by adding clauses on platform operators' duty to take necessary measures to ensure the safety and health of their platform workers at work.

Apart from preventing work accidents, a statutory obligation on occupational health and safety may also facilitate workers to claim damages in cases of negligence. Take a rider, then an employee of Foodpanda, who was injured after making deliveries when the Typhoon No. 8 was issued in 2020. The High Court ruled that the delivery platform was in breach of its statutory duty under occupational safety and health laws, and awarded HK$1.3 million in damages to the rider.[30] While in the absence of statutory provisions, the court may still find that platform operators have a common law duty of care to their workers on the neighbour principle, the legal proceedings may inevitably be more complicated and troublesome, and the results far from certain.

4. Recommendations for Trade Union's Advocacy Campaign

The ILO adopted the Decent Work in the Platform Economy Convention, 2026 (No. 193) in June 2026, establishing the first international labour standards on ensuring platform workers' access to decent work. Key provisions of the convention are as follows:

- **Application**: Applies to both web-based and location-based digital platforms, as well as all platform workers regardless of their employment status;

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[28] Wang, Yaolin & Zou, Mimi (2025) "Platform Fissurisation and Regulatory Challenges in China's Gig Economy: The Case of Food Delivery Platform Work", *China: An International Journal* Vol. 23(1), p. 10-13 (hdl.handle.net/1959.4/104189) [September 2026]

[29] Hong Kong Free Press (2025.05.22) *Around 270 Keeta delivery riders strike to protest 'unfair' system, reduced pay* (hongkongfp.com/2025/05/22/around) [September 2026]

[30] Hong Kong Free Press (2025.09.04) *Hong Kong court orders Foodpanda to pay HK$1.3m in damages to rider injured during typhoon* (hongkongfp.com/2025/09/04/hong-kong-court) [September 2026]

- **Classification of employment status**: Does not impose a particular employment classification for platform workers but requires the government to take measures to ensure effective and accurate determination of employment status on the "primacy of facts" principle;
- **Freedom of association**: Requires the government to take measures to respect, promote and realize, in the platform economy, freedom of association and the effective recognition of the right to collective bargaining;
- **Occupational safety and health**: Requires the government to take measures for the prevention of occupational accidents, occupational diseases and any other injuries to platform workers' health;
- **Pay and remunerations**: Requires the government to consider extending coverage of minimum wage to platform workers who are not in employment relationship;
- **Social security**: Requires the government to ensure that platform workers have access to social security protection comparable to workers of the same classification of employment status;
- **Algorithmic management**: Requires digital platforms to explain automated decisions such as work allocation, wage determination, ratings and account deactivation; requires human oversight in significant automated decisions, including non-disbursement, suspension or deactivation of account, and termination of employment or engagement; and
- **Access to justice**: Requires the government to ensure easy access to safe, fair and effective dispute resolution mechanisms, and to appropriate and effective remedies.

Though China voted in favour of adopting Convention No. 193 at the International Labour Conference, its special administrative region Hong Kong has so far failed to close almost all regulatory gaps in the platform economy. Table 1 below identifies the gaps that the city's existing labour laws and the Government's proposed legislative framework fail to address.

Table 1: Regulatory Gaps in Hong Kong's Platform Economy

Labour standard	Whether regulatory gap is closed
Application	Partial (applies to location-based platform in food and goods delivery services only)
Classification of employment status	Partial (creates a third category between employee and contractor, but provide no mechanism for effective and accurate determination of employment status)
Freedom of association	No (platform workers may join trade unions but protection against anti-union discrimination applies to employees only)
Occupational safety and health	No (no statutory provisions)
Pay and remunerations	No (no statutory provisions)

Social security	Partial (work-injury compensation only)
Algorithmic management	No (no statutory provisions)
Access to justice	No (no statutory provisions)

The Government's effort to protect platform workers is obviously too little, too late; local trade unions or labour organizations have a great deal of advocacy work to do for ensuring platform workers' access to decent work. The following paragraphs give recommendations for trade union's advocacy campaign. As the Government is expected to table a bill on the work injury compensation scheme for platform workers by end of 2026, the recommendations begin with remedial measures to address the deficiencies of the proposed legislative framework. Then, long-term policy options to close the regulatory gaps in the platform economy follow.

Remedial measures to the proposed framework

Section 3 identifies the major deficiencies of the proposed work injury compensation scheme, which include: whether a "platform work agreement" includes a "contract of employment" is uncertain; accidents occurred when waiting for order are not covered; earnings from non-platform work are discarded when calculating compensation; agency or dispatched workers are not protected; and provisions for operator's statutory duty of care are not considered. The recommended remedial measures to address these shortcomings include:

- Ensuring that a "platform work agreement" under the new legislation does not include a "contract of employment" and reiterating that the legal principles and tests developed in common law cases continue to apply in determining whether a platform worker is an employee despite the creation of a third category between employee and contractor;
- Extending the coverage of work injury compensation to accidents occurred during the period of time a platform worker logged in her or his account, including the time standing by or waiting for orders;
- Stipulating that where a platform worker has other non-platform work, if the worker is working in her or his part-time platform work at the time of accident, and she or he is incapacitated from performing other concurrent platform and non-platform work, the platform worker's earnings should be computed by including all the earnings from platform and non-platform work when calculating the compensation;
- Stipulating that the requirement similar to the minimum monthly earnings under the ECO is applicable in the calculation of periodical payments to platform workers during the period of work injury sick leave;
- Stipulating that agency or dispatched workers who provide services to the platform shall enjoy the same rights as platform workers directly engaged by the operator under the new legislation, and platform operator and intermediaries shall be jointly and severally liable for the obligations under the law; and

- Making provisions on platform operators' duty to take necessary measures to ensure the safety and health of their platform workers at work, and empowering the authorities to make occupational safety and health regulations or codes of practices relating to platform work, requiring operators to ensure that work arrangements and algorithm management do not pose safety and health risks to platform workers.

Long-term options to close regulatory gaps

At the core of platform workers lacking statutory protection is that most labour laws currently in force were drafted around the binary notion of employment status, which struggles to accommodate the flexible or non-standard work arrangement in the platform economy. There are two legislative strategies to tackle this problem. The first strategy extends the legal definition of employee to cover platform workers or facilitates the classification of platform workers as employees. The EU's *Platform Work Directive*, which introduces a rebuttable legal presumption of the existence of employment relationship if facts indicating direction and control are found, and places the burden of proof of the contrary on the platform operators, falls into this category.

The second strategy creates a new category of employment status for platform workers and grants them some statutory protections. Singapore's *Platform Workers Act 2024*, China's policy guidance concerning labour protections for workers in new forms of employment and Hong Kong's proposed work injury compensation scheme belong to this category. A legislation tailored to platform workers will undoubtedly provide them with an easier route, which does not require to come through the often complicated legal proceedings to ascertain their actual employment status, to enjoy some statutory rights and benefits. This approach may however have an unwanted consequence of leaving platform workers with only inferior statutory protection, especially in the event that the protection afforded is very limited and the court is more inclined to classify their employment status as the new category. Platform workers are often the most vulnerable group in the society; leaving them with inferior protection is defeating the very purpose of labour laws to protect the weaker party to a work relationship. To minimize the adverse effects of this legislative strategy, trade unions need to fight for closing as many regulatory gaps as possible and ensure that platform workers can enjoy statutory rights and benefits comparable to those in employment relationship. Informed by ILO Convention No. 193, the following paragraphs suggest long-term policy options for trade union's policy advocacy.

Extending the coverage to other platform work

The proposed work injury compensation scheme applies to food and goods delivery platforms only. Meanwhile, the scrutiny of all the legislation and regulations relating to ride-hailing services has completed, and it is expected that licensed ride-hailing platforms will start operating in August 2027. It is advisable for trade unions to

start campaigning for the inclusion of ride-hailing drivers in the compensation scheme. There should be little technicalities as the definition of "platform workers" under the proposed legislative framework is wide enough to cover the drivers.

Regarding workers providing other location-based digital platform services, such as domestic work or home-care nursing service, they may well fall outside the scope of "platform workers", as the matching of service providers and users are usually not made through automated means. The operation of this kind of platforms is more akin to that of agency work arrangement, in which employer's functions are split between labour dispatch intermediaries and end users, making it difficult to determine if there is employment relationship in this kind of multi-party work arrangement and if yes, with whom. Trade unions will need to explore the "joint employers" doctrine, placing statutory employer obligations with both the intermediaries and hiring, jointly and severally.

There is too little information about web-based digital platforms in Hong Kong to make any meaningful policy recommendations. Trade unions need to ask the Government to compile statistics on persons engaging paid work on web-based platforms as soon as possible.

Protection against anti-union discrimination

Under the Trade Unions Ordinance, a person who has entered into or worked under a contract personally to execute any work or labour is free to join a trade union. That means, platform workers who are not in employment relationship may become trade union members; they are however excluded from the statutory protection against anti-union discrimination under the EO which applies only to employees. Freedom of association is a fundamental labour right recognised by the ILO and the Government should take necessary measures to honour its obligations. Trade unions are advised to urge the authorities to criminalise all forms of discrimination against platform workers' exercise their rights to join a trade union and participate in trade union activities (similar to the provisions under Part IVA of the EO). Where a platform worker's work agreement is terminated (including suspension for a specified period) by the operator on grounds trade union membership or activities, she or he may make a claim for civil remedies, including reinstatement, re-engagement or monetary compensation (similar to the provisions under Part VIA of the EO).

Right to fair remunerations and social protection

The *CUHK study* finds that more than 70% of the platform workers surveyed wanted to have a guaranteed hourly base salary.[31] Fluctuating orders and uncompensated expenses greatly affect platform workers' earnings; in certain cases, their incomes were even lower than the statutory minimum wage. Unfair pay was also

[31] Note 5, Chan et al (2022), p. 61-62

one of the main reasons why platform delivery workers staged several strikes in past few years. Trade unions should ask the Government to consider extending the application of statutory minimum wage to platform workers. How to handle the issue of workers concurrently logging in more than one platforms and how to offset the expenses incurred by workers in providing their own tools (such as vehicle depreciation, fuel and license fees, traffic violation fines, etc. that riders need to bear themselves) are best settled by collective agreements.

The Government should also explore measures to ensure that platform workers have access to social security protection. Priorities should be given to sickness allowance, maternity leave pay and platform operators' contributions to the Mandatory Provident Fund (MPF) Scheme.

Regulation on algorithm management

Grievances of platform operators' algorithm management were another main cause of rider's industrial actions. Platform workers often complained of the opaqueness of the algorithms that determine service fees, assignment of order and ranking system. They also criticized the lack of effective mechanisms for appealing operator's penalty or sanctions, such as downgrading their ratings or suspending their accounts. Trade unions should ask the Government to enact laws to give effect to relevant provisions of ILO Convention No. 193 on regulating algorithm management. Particularly, the laws shall require digital platforms to explain automated decisions such as service fees, task matching, worker's ratings and account deactivation; and mandate human oversight in significant automated decisions, including non-disbursement, suspension or deactivation of account, and termination of employment or engagement.

Access to the Labour Tribunal.

The Labour Tribunal offers a quick, informal and inexpensive way of settling monetary disputes between employees and employers, including claims arising from breach of employment contract. However, for platform workers whose employment status is ambiguous, the Tribunal must first determine whether they are employees before it can proceed to hear their cases. Trade unions are advised to campaign for extending the Tribunal's justification to platform workers regardless of their employment status to hear monetary claims arising from disputes over their platform work agreements or other statutory entitlements (if any).

5. Summary of Recommendations

This policy brief makes the following recommendations for trade union's policy advocacy for strengthening protection of digital platform workers in Hong Kong.

Remedial measures to the proposed work injury compensation scheme

- Ensuring that a "platform work agreement" under the new legislation does not include a "contract of employment";
- Extending the coverage to accidents occurred during the period of time a platform worker logged in her or his account;
- Stipulating that platform worker's earnings should be computed by including all the earnings from platform and non-platform work if the worker is working in her or his part-time platform work at the time of accident;
- Stipulating that the requirement of minimum monthly earnings is applicable in the calculation of periodical payments during the period of temporary incapacity;
- Stipulating that agency or dispatched workers shall enjoy the same rights as platform workers directly engaged by the operator, and platform operator and intermediaries shall be jointly and severally liable for the obligations under the law; and
- Making provisions on platform operators' duty to take necessary measures to ensure the safety and health of their platform workers at work, and empowering the authorities to make occupational safety and health regulations or codes of practices relating to platform work.

Long term policy advocacy

- Extending the coverage to other platform work such as ride-hailing, exploring the feasibility of introducing the "joint employers' doctrine in addressing multi-party work arrangement such as domestic work or home-care nursing service platforms and compiling statistics on persons engaged in paid work on web-based platforms;
- Extending the protection against anti-union discrimination to platform workers and granting them the rights to civil remedies if their work agreements were terminated by the operators on grounds of trade union membership or activities;
- Extending the application of statutory minimum wage to platform workers and exploring measures to ensure them have access to social protection such as sickness allowance, maternity leave pay and operator's contribution to MPF Scheme;
- Regulating algorithm management with a view to ensuring transparency and human oversight in significant automated decisions; and
- Extending the Labour Tribunal's jurisdiction to platform workers.