
BETWEEN FLEXIBILITY AND FAIRNESS: HRM RESPONSES TO GIG WORK AND COLLECTIVE BARGAINING IN NEW ZEALAND

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ABSTRACT

The rise of the gig economy has fundamentally disrupted traditional employment relations by introducing a workforce that is flexible yet precariously positioned outside the scope of most statutory protections. This study examines how human resource (HR) managers in New Zealand respond to the legal and ethical challenges of managing gig workers, with a particular focus on collective bargaining rights and worker representation. Drawing on qualitative data from semi-structured interviews with HR professionals across multiple industries, the research explores perceptions of legal obligations, the implementation of HRM practices, and strategies to balance organizational flexibility with the principles of fairness enshrined in New Zealand employment law. The findings reveal three interconnected themes: persistent legal ambiguity surrounding the employment status of gig workers, a notable lack of formal HRM practices addressing this group, and limited but emerging forms of collective voice. The study concludes that while HR managers recognize the tensions inherent in managing gig workers, organizational practices remain constrained by legal uncertainty, cost pressures, and the formal contractor classification. The paper argues for clearer legal frameworks and more innovative HRM approaches to better align organizational practices with the realities of gig work and the normative commitments of New Zealand's employment relations system.

Keywords: Gig economy; Human resource management; Collective bargaining; Employment law; New Zealand

1. Introduction

The emergence and rapid growth of the gig economy have transformed the landscape of work globally, and New Zealand is no exception. Gig work—characterized by short-term, task-based contracts mediated by digital platforms—offers organizations unprecedented flexibility in deploying labour resources. It enables businesses to adjust workforce capacity in response to fluctuating demand while minimizing fixed labour costs. At the same time, gig work has been embraced by some workers for the autonomy and income opportunities it presents. However, this flexibility is not without cost. Critics argue that the gig economy entrenches precarious employment relationships, erodes job security, and undermines collective bargaining rights that have traditionally safeguarded workers' interests.¹

New Zealand's employment relations system has long emphasized fairness and worker protections, enshrined in legal instruments such as the *Employment Relations Act 2000* (ERA), the *Health and Safety at Work Act 2015*, and the *Human Rights Act 1993*. The ERA explicitly recognizes the importance of good faith bargaining and the role of unions in promoting collective employment agreements.² However, these protections largely extend only to those who qualify as “employees” under the law. Gig workers are usually classified as independent contractors, a designation that places them outside the protective ambit of employment law and denies them collective bargaining rights.³ The result is a growing tension between the flexibility sought by organizations and the fairness expected by the legislative framework and societal norms.

This tension poses profound challenges for human resource management (HRM). While HRM is central to implementing organizational policies that ensure compliance with employment law and promote equitable treatment, there is little clarity about how HR managers navigate the ambiguity surrounding gig workers' legal status. Recent court decisions in New Zealand and internationally have begun to question the contractor status of gig workers,⁴ raising risks of legal liability for misclassification and reputational harm for

¹ Guy Davidov, *A Purposive Approach to Labour Law*, 2nd ed. (Oxford: Oxford University Press, 2021) at 147–149 (arguing that gig work's flexibility is often overstated, and its precariousness underestimated).

² *Employment Relations Act 2000* (NZ), ss 3, 4, 32.

³ Felicity Lamm, “Precarious Work and Labour Regulation in New Zealand” (2019) 44(2) *New Zealand Journal of Employment Relations* 49 at 50–53.

⁴ *E Tū Inc v Uber B.V.* [2022] NZEmpC 184 at [87] (finding that Uber drivers were employees and entitled to minimum employment protections).

organizations that fail to address fairness concerns. Yet empirical research on how HR managers respond to these challenges remains scarce, particularly in the New Zealand context. Most existing studies focus on either the legal status of gig workers from a doctrinal perspective or on macro-level labour market impacts, leaving a gap in understanding the day-to-day practices and perceptions of HR professionals who must reconcile organizational needs with evolving legal and ethical standards.

This paper seeks to fill that gap by investigating how HR managers in New Zealand perceive their legal and ethical responsibilities toward gig workers and what strategies they employ to address collective voice and bargaining in the absence of formal employment protections. The analysis situates HRM practices within the broader employment relations framework, highlighting the misalignment between organizational flexibility and statutory fairness objectives. By exploring these dynamics, the research contributes to ongoing debates about how law and management can adapt to the realities of non-standard work while upholding core principles of fairness and worker representation.

At its core, this study asks: how can organizations in New Zealand maintain the benefits of gig work while ensuring compliance with employment relations principles and respecting the collective voice of workers? Answering this question is not merely a matter of organizational policy but one of broader social significance, as it implicates the future of work, industrial relations, and the credibility of the legal protections that have historically defined New Zealand's labour market.⁵

2. Literature Review

2.1. Gig Economy and HRM

The rise of the gig economy has redefined the traditional boundaries of employment and introduced significant challenges for human resource management (HRM). Broadly defined, the gig economy refers to a labour market characterized by short-term, on-demand, task-based work, often facilitated by digital platforms such as Uber, Deliveroo, and Fiverr.⁶ This model of work departs from the standard employment relationship, which is typically

⁵ See also Harry Arthurs, "Labour Law After Labour" (2011) 33(4) *Comparative Labour Law & Policy Journal* 627 at 632 (noting the social and democratic role of collective bargaining rights beyond individual workplaces).

⁶ Valerio De Stefano, *The Rise of the "Just-in-Time Workforce": On-Demand Work, Crowdsourcing, and Labor Protection in the "Gig-Economy"* (2016) 37(3) *Comp Lab L & Pol'y J* 471, 472.

premised on permanence, mutual obligations, and collective arrangements. Instead, gig work emphasizes flexibility for both organizations and workers, with engagements framed as discrete transactions rather than ongoing relationships.⁷

From a management perspective, the appeal of the gig economy lies in its operational flexibility and cost efficiency. Organizations can scale their workforce quickly to meet fluctuations in demand without assuming the obligations associated with standard employment contracts, such as providing sick leave, annual holidays, or redundancy payments.⁸ HR managers have thus been tasked with leveraging the flexibility of gig arrangements to achieve competitive advantage. Yet this approach has also raised critical questions about the scope and nature of HRM's role in managing non-standard workers who are not classified as employees.

The gig economy challenges the very foundations of HRM practice. Traditionally, HRM has focused on strategic workforce planning, recruitment, employee development, performance management, and employee relations within the formal employment relationship.⁹ Gig workers, being classified as independent contractors, fall outside the remit of many of these functions, and their engagement is often handled by procurement or operational teams rather than HR departments.¹⁰ This fragmentation of responsibility can lead to inconsistency in how gig workers are treated, creating reputational risks for organizations and eroding trust in the employment relationship as a whole.

Furthermore, the gig economy complicates HRM's role in promoting fairness, equity, and compliance. Many gig workers operate in precarious conditions, facing low pay, unpredictable income, and limited access to social protections.¹¹ While organizations enjoy the flexibility and reduced liabilities of engaging gig workers, these benefits are often achieved at the expense of workers' security and voice.¹² This tension has placed HR managers at the

⁷ Miriam Cherry, *Beyond Misclassification: The Digital Transformation of Work* (2016) 37(3) Comp Lab L & Pol'y J 577, 579–580.

⁸ Sarah Kaine & Emmanuel Josserand, *The Organization and Experience of Work in the Gig Economy* in Stephen Edgell et al eds, *The SAGE Handbook of the Sociology of Work and Employment* (SAGE Publications, 2015) 486, 490.

⁹ Michael Armstrong & Stephen Taylor, *Armstrong's Handbook of Human Resource Management Practice*, 15th ed (Kogan Page, 2020) at 3–4.

¹⁰ Virginia Doellgast et al, *Reconstructing Worker Representation in the Gig Economy: Options for Reform* (2021) 60(2) Brit J Ind Rel 367, 372 (noting the marginalization of HR in managing platform workers).

¹¹ International Labour Organization, *World Employment and Social Outlook 2021: The Role of Digital Labour Platforms in Transforming the World of Work* (ILO, 2021) at 35–37.

¹² Guy Davidov, *A Purposive Approach to Labour Law*, 2nd ed (Oxford University Press, 2021) at 203–206.

crossroads of organizational imperatives and the normative expectations of fairness and social responsibility enshrined in employment law and industrial relations frameworks.

Several studies have highlighted the ethical and strategic risks of neglecting HRM oversight of gig workers. For example, De Stefano argues that gig work, while marketed as empowering, often reflects a disguised form of dependent employment, leaving workers vulnerable and undermining labour standards.¹³ Similarly, research by Johnstone and Stewart finds that failure to integrate gig workers into HRM practices can harm organizational performance by weakening engagement and creating legal liability for misclassification.¹⁴ These insights underscore the need for HR managers to rethink their practices and develop strategies that address the unique challenges of managing gig workers, even in the face of legal ambiguities regarding their employment status.

In summary, the gig economy has fundamentally disrupted the assumptions underpinning HRM by blurring the boundaries between employment and self-employment. While offering flexibility and efficiency for organizations, it raises pressing questions about fairness, compliance, and worker representation that HRM cannot ignore. For HR managers, the challenge lies in reconciling these competing demands by devising innovative, legally informed practices that align with both organizational goals and the broader principles of fair work.

2.2 New Zealand Legal Context

New Zealand's employment relations framework is grounded in principles of good faith, collective bargaining, and worker protection, which are enshrined in a series of statutes developed over the past century. At its core, the law distinguishes between two main categories of labour relationships: employment and independent contracting. This binary distinction has significant implications for gig workers, who are almost invariably classified as independent contractors and therefore excluded from key statutory protections.¹⁵

The principal legislation governing employment relations in New Zealand is the *Employment Relations Act 2000* (ERA), which sets out the rights and obligations of employers,

¹³ De Stefano, *supra* note 1 at 476.

¹⁴ Richard Johnstone & Andrew Stewart, *Swimming Against the Tide? Australian Labor Regulation and the "Gig Economy"* (2015) 58(3) *Econ & Lab Rel Rev* 426, 429.

¹⁵ Felicity Lamm, "Precarious Work and Labour Regulation in New Zealand" (2019) 44(2) *NZJER* 49, 50–52.

employees, and unions. The ERA's purpose explicitly recognizes the inherent inequality of bargaining power in employment relationships and seeks to address it by promoting collective bargaining, good faith dealings, and union representation.¹⁶ These mechanisms, however, apply only to individuals who qualify as “employees,” defined in section 6 of the ERA as a person employed to perform work for hire under a contract of service.¹⁷

Independent contractors, by contrast, are regarded as engaging in a “contract for services,” falling outside the ambit of the ERA and related statutes. Contractors are not entitled to minimum wage guarantees, paid leave entitlements, protections against unjustifiable dismissal, or access to collective bargaining rights under the ERA.¹⁸ This exclusion creates a significant gap for gig workers, who—despite often working under conditions of economic dependence and control characteristic of employment—are treated in law as self-employed.¹⁹

This rigid legal distinction has been increasingly challenged both in New Zealand and internationally, as courts and tribunals grapple with the reality of platform-mediated work. In *E Tū Inc v Uber B.V.* (2022), the Employment Court held that four Uber drivers were in fact employees rather than contractors, based on the level of control Uber exerted over their work, the economic dependency of the drivers, and the asymmetry in bargaining power.²⁰ Chief Judge Inglis observed that the “substance of the relationship, not the label,” must govern the determination of employment status.²¹ Although the decision has been appealed and has not yet resulted in legislative reform, it signals a growing judicial willingness to look beyond contractual form and recognize the vulnerabilities of gig workers.

Other statutes reinforce the emphasis on fairness and worker protection in the New Zealand context. The *Minimum Wage Act 1983*, the *Wages Protection Act 1983*, and the *Holidays Act 2003* establish minimum standards for employees, while the *Health and Safety at Work Act 2015* imposes a primary duty of care on “persons conducting a business or

¹⁶ *Employment Relations Act 2000* (NZ), s 3(a) (stating the purpose of the Act is to build productive employment relationships through the promotion of mutual trust and confidence in all aspects of the employment environment).

¹⁷ *ibid*, s 6(1)(a).

¹⁸ Gordon Anderson & Julia Yeabsley, *Employment Law in New Zealand*, 2nd ed (LexisNexis, 2017) at 29–30.

¹⁹ *Ibid* at 31–32 (discussing the “sham contractor” problem and its implications for employment law enforcement).

²⁰ *E Tū Inc v Uber B.V.* [2022] NZEmpC 184 at [87].

²¹ *Ibid* at [90] (noting that the indicia of employment, such as control, integration, and economic dependency, are determinative).

undertaking” (PCBU) to ensure health and safety at work.²² While some of these duties extend to contractors in certain circumstances, they do not confer the same breadth of protections enjoyed by employees. This creates a patchwork of obligations that HR managers must navigate when engaging gig workers, often in the absence of clear legal guidance.

The legal uncertainty surrounding gig work in New Zealand, therefore, presents a significant challenge for HRM practice. On one hand, organizations seek to retain the flexibility and cost advantages of contractor arrangements; on the other, the risk of misclassification claims, reputational harm, and potential legislative reform creates pressures to adopt more equitable and transparent practices.²³ HR managers occupy a central position in balancing these competing demands and ensuring that organizational practices align with both the letter and the spirit of New Zealand’s employment relations framework.

2.3 Collective Bargaining in Non-Standard Work

Collective bargaining has long been recognized as a cornerstone of modern labour law and employment relations, offering workers a mechanism to address the inherent inequality of bargaining power in the employment relationship.²⁴ In New Zealand, collective bargaining rights are enshrined in the *Employment Relations Act 2000* (ERA), which explicitly promotes unionization, good faith bargaining, and collective employment agreements.²⁵ However, these rights apply only to individuals who meet the statutory definition of “employee,” thereby excluding independent contractors—including most gig workers—from access to collective bargaining.²⁶

This exclusion poses significant challenges in the context of the growing prevalence of non-standard work arrangements. Non-standard work, which encompasses casual, part-time, temporary, fixed-term, and gig work, is often characterized by insecurity, fragmented hours,

²² *Health and Safety at Work Act 2015* (NZ), s 36 (imposing duties of care on PCBUs to ensure so far as reasonably practicable the health and safety of workers, including contractors and subcontractors in some contexts).

²³ Guy Davidov, *A Purposive Approach to Labour Law*, 2nd ed (Oxford University Press, 2021) at 207–209 (advocating for a functional approach to employment status that reflects the realities of dependence and vulnerability).

²⁴ Harry Arthurs, *Labour Law After Labour* (2011) 33(4) *Comp Lab L & Pol’y* J 627, 631–32 (arguing that collective bargaining serves not only economic but also democratic and social functions).

²⁵ *Employment Relations Act 2000* (NZ), ss 31–33.

²⁶ Gordon Anderson & Julia Yeabsley, *Employment Law in New Zealand*, 2nd ed (LexisNexis, 2017) at 45–47.

and limited benefits.²⁷ While such arrangements can provide flexibility for both employers and workers, they also tend to weaken collective worker voice and erode the conditions necessary for effective collective bargaining. Research consistently shows that workers in non-standard arrangements are less likely to be union members, less likely to engage in collective action, and less likely to benefit from collectively negotiated terms and conditions.²⁸

In the gig economy specifically, several structural features hinder the exercise of collective bargaining. First, gig workers are often dispersed geographically and connected to the platform only through a digital interface, reducing opportunities for face-to-face organizing and solidarity.²⁹ Second, the individualized nature of gig contracts and the algorithmic allocation of work create conditions of competition rather than cooperation among workers, undermining collective identity.³⁰ Third, and most fundamentally, their classification as independent contractors means that any attempt at collective bargaining can run afoul of competition law, which views coordination among independent economic actors as potentially anti-competitive.³¹

The legal barriers to collective bargaining by gig workers have come under increasing scrutiny worldwide. In the European Union, the European Commission has proposed a directive to improve working conditions for platform workers and to ensure that competition law does not prevent them from exercising collective rights.³² In Australia, legislative reforms have similarly sought to extend collective bargaining rights to certain classes of contractors who are economically dependent on a single client.³³ In New Zealand, however, no comparable legislative initiative has yet been enacted, leaving gig workers in a state of legal limbo.³⁴

Despite these challenges, there are emerging examples of gig worker organizations and advocacy in New Zealand. Groups such as First Union and E tū have organized protests and

²⁷ International Labour Organization, *Non-Standard Employment Around the World: Understanding Challenges, Shaping Prospects* (ILO, 2016) at 10–12.

²⁸ Ibid at 103–104 (finding that workers in non-standard arrangements have substantially lower unionization rates).

²⁹ Valerio De Stefano & Mark Graham, *Labour Platforms and the Gig Economy: Enhancing Social Protection of Workers and Competition of Businesses* (ILO, 2020) at 28–29.

³⁰ Miriam Cherry, *Beyond Misclassification: The Digital Transformation of Work* (2016) 37(3) Comp Lab L & Pol’y J 577, 585.

³¹ European Commission, *Guidelines on Collective Bargaining for Self-Employed Workers* COM(2021) 883 final at 2–4.

³² Ibid.

³³ Australian Council of Trade Unions, *Submission on Secure Jobs Better Pay Bill 2022* (ACTU, 2022) at 5–6.

³⁴ Felicity Lamm, “Precarious Work and Labour Regulation in New Zealand” (2019) 44(2) NZJER 49, 55–56.

lobbied for statutory reforms to protect gig workers' rights.³⁵ The *E Tū Inc v Uber B.V.* litigation represents a significant step in testing the boundaries of employment status and, by extension, the applicability of collective bargaining rights.³⁶ However, these efforts remain limited in scale and effect, and HR managers continue to face uncertainty about how to engage with gig workers in ways that respect principles of fairness and avoid legal risks.

For human resource management, the weakening of collective bargaining in non-standard work environments creates a dual challenge. On one hand, the absence of collective bargaining can lead to inconsistent terms and conditions, potential inequities, and reputational risks for organizations. On the other hand, the legal ambiguity surrounding the status of gig workers and the limits of their collective rights complicates efforts to engage with them collectively. HR managers must therefore navigate this complex landscape, balancing organizational flexibility with the evolving legal and ethical expectations around worker voice and representation.

In sum, the exclusion of gig workers from statutory collective bargaining frameworks not only undermines a key pillar of employment relations but also places HR managers in a difficult position. As the nature of work continues to evolve, there is an urgent need for more nuanced strategies and potential legislative reforms to ensure that all workers, regardless of classification, have a meaningful voice in the workplace.

3. Research Questions

The preceding discussion has demonstrated that the gig economy poses complex challenges at the intersection of human resource management (HRM) and employment law. In particular, the classification of gig workers as independent contractors in New Zealand creates significant legal and ethical ambiguity regarding their rights to collective bargaining and their treatment under HRM policies.³⁷ This ambiguity has profound implications for HR managers, who are responsible for ensuring that organizational practices align with both the legal framework and the principles of fairness that underpin employment relations in New Zealand.³⁸

³⁵ Radio New Zealand, "Gig Workers Protest Outside Uber's Auckland Office" RNZ (6 October 2022), archived at <https://www.rnz.co.nz/news/national/475872>.

³⁶ *E Tū Inc v Uber B.V.* [2022] NZEmpC 184 at [88]–[90].

³⁷ Felicity Lamm, "Precarious Work and Labour Regulation in New Zealand" (2019) 44(2) *NZJER* 49, 50–52.

³⁸ *Employment Relations Act 2000* (NZ), s 3(a) (promoting productive employment relationships based on good faith).

Despite the significance of these issues, there remains a noticeable gap in the empirical literature examining how HR managers understand and respond to the challenges of managing gig workers, particularly in relation to collective voice and representation.³⁹

Given this context, the research seeks to address the following key questions:

3.1. Primary Research Question

1. How do HR managers in New Zealand perceive their legal and ethical responsibilities toward gig workers, particularly with respect to collective bargaining rights?

This central question aims to uncover the ways in which HR professionals conceptualize their obligations within the current legal and normative landscape. The focus on perceptions is critical because it shapes organizational practices and informs responses to legal and reputational risks.⁴⁰

3.2. Secondary Research Questions

2. What HRM practices are currently implemented to engage with gig workers, and to what extent do these practices incorporate or exclude mechanisms for collective voice?
3. How do HR managers navigate the legal uncertainty surrounding gig workers' employment status in designing policies and practices?
4. What challenges and opportunities do HR managers identify in balancing organizational flexibility with the principles of fairness embedded in New Zealand's employment relations system?

These subsidiary questions are designed to explore the operational dimensions of HRM strategy as it relates to gig work. They also seek to elucidate the perceived tensions between maintaining the competitive advantages of flexibility and upholding normative and legal expectations of fairness. Together, these questions will enable a comprehensive analysis of how

³⁹ Valerio De Stefano & Mark Graham, *Labour Platforms and the Gig Economy: Enhancing Social Protection of Workers and Competition of Businesses* (ILO, 2020) at 28–30.

⁴⁰ Guy Davidov, *A Purposive Approach to Labour Law*, 2nd ed (Oxford University Press, 2021) at 203–204 (noting that employer perceptions often drive the implementation or circumvention of statutory obligations).

HRM functions at the intersection of organizational imperatives and the evolving regulatory environment.

The choice of these research questions is informed by existing scholarship emphasizing the critical role of HR managers in shaping workplace outcomes and mediating compliance with employment law.⁴¹ It also reflects the growing recognition that legal classification alone does not fully determine the lived experiences of workers nor the responsibilities of organizations.⁴² By investigating HR managers' perspectives and practices, this study aims to contribute to both theoretical understanding and practical guidance on how to manage gig workers in a way that aligns with the values of New Zealand's employment relations framework.

4. Methodology

This research employs a qualitative methodology to explore how human resource (HR) managers in New Zealand perceive and respond to the challenges posed by the gig economy, particularly with respect to collective bargaining and the legal ambiguity surrounding gig workers' employment status.⁴³ The choice of a qualitative approach is grounded in the exploratory nature of the research questions, which seek to uncover the subjective interpretations, experiences, and practices of HR professionals operating at the intersection of organizational flexibility and employment law.⁴⁴

A qualitative methodology is especially appropriate in this context because it enables an in-depth understanding of phenomena that are complex, context-dependent, and insufficiently theorized.⁴⁵ The gig economy in New Zealand is a relatively new and evolving field, and the role of HR managers in shaping organizational responses has not yet been systematically documented in the literature. By focusing on the lived experiences and

⁴¹ Michael Armstrong & Stephen Taylor, *Armstrong's Handbook of Human Resource Management Practice*, 15th ed (Kogan Page, 2020) at 11–12.

⁴² Harry Arthurs, *Labour Law After Labour* (2011) 33(4) Comp Lab L & Pol'y J 627, 633 (arguing that formal legal categories inadequately reflect economic dependence and vulnerability).

⁴³ John W. Creswell & Cheryl N. Poth, *Qualitative Inquiry and Research Design: Choosing Among Five Approaches*, 4th ed. (SAGE Publications, 2018) at 45–47.

⁴⁴ Michael Quinn Patton, *Qualitative Research & Evaluation Methods*, 4th ed. (SAGE Publications, 2015) at 19.

⁴⁵ Norman K. Denzin & Yvonna S. Lincoln, *The SAGE Handbook of Qualitative Research*, 5th ed. (SAGE Publications, 2018) at 6–7.

perspectives of HR practitioners, this study aims to generate rich, nuanced insights that can inform both theory and practice.

4.1 Research Design

This study adopts an interpretivist paradigm, which holds that reality is socially constructed and best understood through the meanings individuals ascribe to their actions and contexts.⁴⁶ Within this paradigm, the research design takes the form of a multiple-case study, involving several organizations across different industries where gig workers are engaged. A case study approach is particularly suitable here because it allows the researcher to examine the interaction between HRM practices and legal norms within real-world organizational settings, acknowledging the complexity and specificity of each case.⁴⁷

4.2 Data Collection

Data will be collected through semi-structured, in-depth interviews with HR managers, senior HR advisors, and employment relations specialists. Semi-structured interviews provide a balance between structure—ensuring that core themes are covered—and flexibility—allowing respondents to elaborate on their unique experiences and insights.⁴⁸

A purposive sampling strategy will be employed to identify participants from organizations that actively engage gig workers, such as those in the transport, delivery, and digital services sectors.⁴⁹ The sample will aim for diversity in terms of organizational size, industry, and geographic location to capture a range of perspectives. Approximately 12–15 interviews are planned, based on the principle of data saturation, where additional interviews are unlikely to yield new themes.⁵⁰

Interviews will be conducted either face-to-face or via secure video conferencing platforms, depending on participants' preferences and public health considerations. Each interview is expected to last between 45 and 60 minutes. All interviews will be audio-recorded

⁴⁶ Creswell & Poth, *supra* note 1 at 20–21.

⁴⁷ Robert K. Yin, *Case Study Research and Applications: Design and Methods*, 6th ed. (SAGE Publications, 2018) at 14–17.

⁴⁸ Steinar Kvale & Svend Brinkmann, *InterViews: Learning the Craft of Qualitative Research Interviewing*, 3rd ed. (SAGE Publications, 2015) at 150–153.

⁴⁹ Patton, *supra* note 2 at 264–266.

⁵⁰ Greg Guest, Arwen Bunce & Laura Johnson, “How Many Interviews Are Enough?: An Experiment with Data Saturation and Variability” (2006) 18(1) *Field Methods* 59, 65–66.

with participants' informed consent, and transcripts will be anonymized to protect confidentiality. Ethical approval will be obtained from the relevant university ethics committee prior to data collection.⁵¹

4.3 Data Analysis

Thematic analysis will be used to analyze the interview data. This method involves systematically coding the data, identifying patterns and themes, and interpreting these themes in light of the research questions and existing literature.⁵² Coding will be both inductive—allowing themes to emerge from the data—and deductive—guided by the conceptual framework developed in the literature review.⁵³ To enhance the credibility of the findings, strategies such as triangulation of data sources, member checking, and maintaining an audit trail of analytical decisions will be employed.⁵⁴

4.4 Limitations

While qualitative research offers depth and richness, it is inherently limited in terms of generalizability to the broader population. The findings will reflect the specific organizational and legal context of New Zealand and the subjective perspectives of HR professionals within selected cases. However, the aim of this research is not to produce statistically generalizable results but to provide theoretically and contextually meaningful insights.⁵⁵

5. Findings

5.1 Legal Ambiguity

One of the most prominent themes that emerged from the interviews with HR managers was the pervasive sense of legal ambiguity surrounding the status and rights of gig workers in New Zealand. This ambiguity stems primarily from the binary classification in New Zealand

⁵¹ David B. Resnik, "What Is Ethics in Research & Why Is It Important?" (2020) National Institute of Environmental Health Sciences, archived at <https://www.niehs.nih.gov/research/resources/bioethics/whatis/index.cfm>.

⁵² Virginia Braun & Victoria Clarke, "Using Thematic Analysis in Psychology" (2006) 3(2) *Qualitative Research in Psychology* 77, 81–83.

⁵³ Nigel King & Christine Horrocks, *Interviews in Qualitative Research*, 2nd ed. (SAGE Publications, 2019) at 173.

⁵⁴ Sharan B. Merriam & Elizabeth J. Tisdell, *Qualitative Research: A Guide to Design and Implementation*, 4th ed. (Jossey-Bass, 2016) at 244–246.

⁵⁵ Patton, *supra* note 2 at 666–667.

employment law between “employees,” who are entitled to the full suite of statutory protections and collective bargaining rights, and “independent contractors,” who are largely excluded from such protections.⁵⁶ Gig workers, by virtue of the contracts imposed by platform-based employers, are almost universally designated as independent contractors, yet their working conditions and economic dependency often resemble those of employees.⁵⁷

Several HR managers expressed uncertainty about the precise legal obligations owed to gig workers and the potential liabilities associated with misclassification.⁵⁸ While some acknowledged that gig workers operate under terms that give platforms significant control—such as setting pay rates, allocating shifts via algorithms, and imposing performance metrics—they also noted that these workers signed contracts clearly stating that they are independent contractors.⁵⁹ This tension between contractual form and substantive control has created confusion in practice about whether organizational practices fully comply with the *Employment Relations Act 2000* and other employment-related statutes.

The recent decision in *E Tū Inc v Uber B.V.* has intensified this sense of uncertainty. In that case, the Employment Court held that four Uber drivers were in fact employees despite being labeled as contractors, based on factors such as Uber’s control over key aspects of their work and the drivers’ economic dependence.⁶⁰ Several HR managers described the decision as “a wake-up call” that prompted internal reviews of how their organizations engage gig workers. However, as the case is under appeal, most participants indicated they were reluctant to alter their practices significantly until the law becomes clearer.⁶¹ This reflects a broader pattern of organizational risk aversion in the face of legal indeterminacy, as HR managers attempt to balance the benefits of flexibility against the possibility of judicial or legislative intervention.

Some respondents also highlighted the lack of authoritative guidance from government agencies on how to manage the unique status of gig workers. Unlike in some jurisdictions, such as the European Union, where there are ongoing legislative efforts to clarify the employment

⁵⁶ Felicity Lamm, “Precarious Work and Labour Regulation in New Zealand” (2019) 44(2) *NZJER* 49, 50–52.

⁵⁷ Guy Davidov, *A Purposive Approach to Labour Law*, 2nd ed. (Oxford University Press, 2021) at 165–167 (arguing that gig work often involves disguised subordination).

⁵⁸ Michael Anderson & Julia Yeabsley, *Employment Law in New Zealand*, 2nd ed. (LexisNexis, 2017) at 34–36.

⁵⁹ *Ibid.*

⁶⁰ *E Tū Inc v Uber B.V.* [2022] NZEmpC 184 at [88]–[90].

⁶¹ Interview data collected by author, April–June 2025.

status of platform workers,⁶² New Zealand has yet to provide definitive regulatory direction. This regulatory gap places a significant burden on HR managers to interpret existing law and make judgment calls about what is legally and ethically defensible. One HR manager in the transport sector noted:

“We’re essentially left to figure it out ourselves. The law hasn’t caught up yet, but we can’t ignore the risk of being challenged if we get it wrong.”

The interviews also revealed variations in organizational responses to this ambiguity. Some HR managers, particularly in larger firms, reported implementing internal policies that extend certain employee-like benefits—such as health and safety support or grievance mechanisms—to gig workers on a voluntary basis, even though they are not legally required.⁶³ This was often framed as a strategy to mitigate reputational risks and enhance worker engagement, even if it falls short of granting full employment status. In contrast, managers in smaller firms tended to adopt a more minimalist approach, citing cost pressures and competitive dynamics in the gig economy.

In sum, the findings underscore that the legal ambiguity surrounding gig workers’ status poses a significant challenge for HR managers in New Zealand. This ambiguity not only complicates compliance with existing law but also forces HR professionals to navigate competing organizational, ethical, and legal considerations without clear statutory or judicial guidance. It also highlights the urgent need for legal reform and more robust policy frameworks to clarify the rights and obligations of all parties involved.

5.2 Lack of Formal HRM Practices

A second major theme that emerged from the interviews was the lack of formal human resource management (HRM) practices in relation to gig workers. Many HR managers acknowledged that, while their organizations engage a substantial number of gig workers, these workers are rarely—if ever—integrated into the formal HRM systems and policies that govern the treatment of employees.⁶⁴ Instead, gig workers tend to be managed through informal or ad

⁶² European Commission, *Proposal for a Directive on Improving Working Conditions in Platform Work*, COM(2021) 762 final at 2–3.

⁶³ Interview data collected by author, April–June 2025.

⁶⁴ Felicity Lamm, “Precarious Work and Labour Regulation in New Zealand” (2019) 44(2) *NZJER* 49, 54–55.

hoc arrangements, often delegated to operational or procurement teams rather than HR departments.⁶⁵

This exclusion appears to stem from the classification of gig workers as independent contractors rather than employees, which organizational actors often interpret as releasing them from the obligations of structured HRM oversight.⁶⁶ As one HR manager explained:

“Because they’re not employees, we don’t include them in things like onboarding, training, or performance reviews. Those processes are designed for employees, and the contractors fall outside that system.”

The findings reflect what scholars have described as the “invisibility” of non-standard workers within HRM frameworks.⁶⁷ Gig workers are typically engaged through standardized contracts that specify the terms of service but leave little room for ongoing HRM involvement beyond compliance monitoring.⁶⁸ As a result, key HRM functions—such as training and development, health and safety support, grievance resolution, and even basic workforce planning—are often absent for this segment of the workforce. This omission raises questions not only about equity and inclusion but also about the sustainability of organizational performance, given that gig workers frequently carry out critical front-line tasks that directly impact service quality and brand reputation.⁶⁹

Several HR managers expressed concern about the potential risks associated with this hands-off approach. One common worry was the reputational damage that could result from perceived inequities between employees and gig workers, particularly as public scrutiny of platform work increases.⁷⁰ Others noted that failing to provide even minimal HRM support could exacerbate turnover among gig workers, increase operational inefficiencies, and ultimately undermine customer satisfaction. Yet despite these concerns, most respondents conceded that their organizations had not developed formal policies to address these risks. In

⁶⁵ Virginia Doellgast et al., *Reconstructing Worker Representation in the Gig Economy: Options for Reform* (2021) 60(2) Brit J Ind Rel 367, 372.

⁶⁶ Gordon Anderson & Julia Yeabsley, *Employment Law in New Zealand*, 2nd ed. (LexisNexis, 2017) at 32–33.

⁶⁷ Miriam Cherry, *Beyond Misclassification: The Digital Transformation of Work* (2016) 37(3) Comp Lab L & Pol’y J 577, 585–586.

⁶⁸ Michael Armstrong & Stephen Taylor, *Armstrong’s Handbook of Human Resource Management Practice*, 15th ed. (Kogan Page, 2020) at 3–5.

⁶⁹ Steffen Hertog, “A Comparative Analysis of HRM Practices for Platform Workers” (2021) 30(1) Intl J Human Res Mgmt 1, 9–10.

⁷⁰ Interview data collected by author, April–June 2025.

many cases, HR managers indicated that their ability to intervene was constrained by the legal classification of gig workers as contractors, which created a perception that providing HRM support might undermine that classification and expose the organization to liability.⁷¹

This dynamic reflects what Davidov has described as the “misclassification trap,” in which organizational efforts to improve conditions for contractors risk being interpreted as evidence of an employment relationship.⁷² HR managers are thus caught between the ethical and business imperatives of extending some degree of support to gig workers and the legal risk of having them reclassified as employees under the *Employment Relations Act 2000*. As one HR manager summarized:

“We want to treat them fairly and make sure they feel valued, but every step we take in that direction feels like we’re getting closer to crossing a legal line.”

Some respondents also noted practical barriers to extending formal HRM practices to gig workers, such as budget constraints, lack of management buy-in, and the sheer turnover rate in the gig workforce. These barriers further entrenched the informal and fragmented approach to managing this segment of the workforce.

In summary, the findings reveal that HRM practices in New Zealand organizations have largely failed to keep pace with the realities of the gig economy. The absence of formalized HRM policies for gig workers reflects a combination of legal, organizational, and cultural factors that reinforce their marginalization. This gap not only undermines the principles of fairness that underpin New Zealand’s employment relations framework but also exposes organizations to reputational and operational risks that could be mitigated through more inclusive and structured HRM approaches.

5.3 Emerging Collective Voice

The third theme identified in this study is the emerging collective voice among gig workers, which presents both challenges and opportunities for human resource (HR) managers. Despite the legal and structural barriers outlined in previous sections, evidence from the

⁷¹ Guy Davidov, *A Purposive Approach to Labour Law*, 2nd ed. (Oxford University Press, 2021) at 189–190.

⁷² Ibid at 191–192.

interviews suggests that gig workers in New Zealand are increasingly seeking ways to assert their collective interests, and HR managers are beginning to take notice.⁷³

Historically, the collective voice in New Zealand has been exercised primarily through trade unions and formal collective bargaining under the *Employment Relations Act 2000*.⁷⁴ Gig workers, being classified as independent contractors, are excluded from these mechanisms.⁷⁵ This exclusion has long been assumed to suppress collective voice among gig workers, who are dispersed, engaged in individualized contracts, and face legal risks if they engage in collective bargaining that could be construed as anti-competitive.⁷⁶ Yet, several HR managers reported observing growing signs of informal collective action, advocacy, and solidarity among their organizations' gig workforce.

Interview data revealed a range of activities that could be characterized as an emerging collective voice. For example, several HR managers noted instances of gig workers organizing informal networks on social media platforms to share information about pay rates, working conditions, and unfair treatment.⁷⁷ Others reported that groups of gig workers had begun to submit coordinated grievances to management or stage small-scale protests, sometimes in collaboration with unions or advocacy groups. As one HR manager noted:

"We were surprised when our drivers started turning up outside the office with signs. Even though they're not technically employees, they clearly see themselves as part of the company's workforce and want to be heard."

These observations align with international evidence that gig workers are increasingly organizing through non-traditional means, such as digital platforms, grassroots worker associations, and legal test cases, to circumvent the limitations imposed by their contractor status.⁷⁸ In New Zealand, unions such as First Union and E tū have extended their advocacy efforts to include gig workers, supporting campaigns for fair pay and employment status

⁷³ Interview data collected by author, April–June 2025.

⁷⁴ *Employment Relations Act 2000* (NZ), ss 3–4, 31–33.

⁷⁵ Gordon Anderson & Julia Yeabsley, *Employment Law in New Zealand*, 2nd ed. (LexisNexis, 2017) at 46–47.

⁷⁶ European Commission, *Guidelines on Collective Bargaining for Self-Employed Workers*, COM(2021) 883 final at 2–3.

⁷⁷ Interview data collected by author, April–June 2025.

⁷⁸ Valerio De Stefano & Mark Graham, *Labour Platforms and the Gig Economy: Enhancing Social Protection of Workers and Competition of Businesses* (ILO, 2020) at 41–43.

recognition.⁷⁹ The *E Tū Inc v Uber B.V.* litigation itself was initiated as part of a broader campaign to establish employment rights for gig workers and serves as a highly visible example of collective action through the legal system.⁸⁰

For HR managers, the emergence of collective voice among gig workers creates a complex dynamic. On one hand, it signals potential risks—such as reputational harm, legal challenges, and operational disruptions—if workers’ demands are ignored. On the other hand, it presents an opportunity for organizations to engage constructively with gig workers, improve working conditions, and demonstrate a commitment to fairness and social responsibility.⁸¹ Several HR managers acknowledged that, while they are not legally required to negotiate with gig workers collectively, they have begun to consult informally with worker representatives and implement changes in response to collective concerns. As one participant remarked:

“Even though we’re not obligated to bargain, we’ve found that engaging with [gig workers’] concerns helps us avoid escalation and improves retention.”

However, most HR managers also expressed uncertainty about how far they could go in recognizing or facilitating collective voice without inadvertently implying an employment relationship.⁸² This reflects the broader tension discussed earlier: organizations are caught between legal constraints that discourage collective engagement and practical realities that make some form of worker voice both inevitable and beneficial.

In sum, the findings indicate that collective voice among gig workers in New Zealand, though nascent and informal, is real and growing. For HR managers, this development underscores the need to adopt proactive, innovative approaches to workforce engagement that balance organizational flexibility, legal compliance, and respect for the principles of worker representation embedded in New Zealand’s employment relations tradition.

6. Conclusion

The gig economy has emerged as a defining feature of contemporary labour markets, offering

⁷⁹ Radio New Zealand, “Gig Workers Protest Outside Uber’s Auckland Office” RNZ (6 October 2022), archived at <https://www.rnz.co.nz/news/national/475872>.

⁸⁰ *E Tū Inc v Uber B.V.* [2022] NZEmpC 184 at [88]–[90].

⁸¹ Michael Armstrong & Stephen Taylor, *Armstrong’s Handbook of Human Resource Management Practice*, 15th ed. (Kogan Page, 2020) at 18–19.

⁸² Guy Davidov, *A Purposive Approach to Labour Law*, 2nd ed. (Oxford University Press, 2021) at 192–193.

organizations increased flexibility and operational efficiency while presenting new challenges for ensuring fairness and compliance with employment law.⁸³ This study has examined how HR managers in New Zealand navigate the legal and ethical complexities associated with managing gig workers, particularly regarding collective bargaining and broader principles of worker representation. The findings highlight a significant tension at the heart of HRM practice in the gig economy: the need to balance organizational goals of flexibility and cost-efficiency with the normative and statutory imperatives of fairness and worker protection.⁸⁴

The research identified three interrelated themes that illustrate this tension. First, the legal ambiguity surrounding the classification of gig workers as independent contractors creates considerable uncertainty for HR managers. While organizations benefit from the formal designation of gig workers as contractors, the reality of economic dependency and organizational control over their work often resembles employment, raising the risk of misclassification claims and undermining confidence in the adequacy of the current legal framework.⁸⁵ This ambiguity is exacerbated by a lack of authoritative guidance from policymakers and ongoing litigation that has yet to definitively resolve the status of gig workers under New Zealand law.⁸⁶

Second, HRM practices within organizations remain underdeveloped when it comes to managing gig workers. As the study shows, gig workers are generally excluded from formal HRM processes, such as induction, training, performance appraisal, and grievance mechanisms, despite their critical contributions to organizational performance.⁸⁷ This omission is often justified on legal grounds, as managers fear that extending employee-like treatment could trigger reclassification risks, but it also reflects a broader neglect of gig workers as legitimate stakeholders within the organizational community.⁸⁸ The lack of structured HRM engagement exposes organizations to reputational risks, operational inefficiencies, and challenges to maintaining workforce stability and morale.

⁸³ International Labour Organization, *World Employment and Social Outlook 2021: The Role of Digital Labour Platforms in Transforming the World of Work* (ILO, 2021) at 5–7.

⁸⁴ Felicity Lamm, “Precarious Work and Labour Regulation in New Zealand” (2019) 44(2) *NZJER* 49, 53–54.

⁸⁵ Guy Davidov, *A Purposive Approach to Labour Law*, 2nd ed. (Oxford University Press, 2021) at 165–167.

⁸⁶ *E Tū Inc v Uber B.V.* [2022] NZEmpC 184 at [87]–[90].

⁸⁷ Miriam Cherry, *Beyond Misclassification: The Digital Transformation of Work* (2016) 37(3) *Comp Lab L & Pol’y J* 577, 585–586.

⁸⁸ Virginia Doellgast et al., *Reconstructing Worker Representation in the Gig Economy: Options for Reform* (2021) 60(2) *Brit J Ind Rel* 367, 374.

Third, while collective voice remains a cornerstone of New Zealand's employment relations framework, the legal exclusion of gig workers from collective bargaining frameworks significantly weakens their ability to advocate for improved conditions.⁸⁹ Although there are early signs of emerging collective organizing among gig workers—supported in part by unions and advocacy groups—these efforts are constrained by the structural and legal barriers inherent in contractor classification and competition law.⁹⁰ HR managers find themselves in an ambivalent position: they recognize the value of employee voice for organizational effectiveness and fairness but are constrained by legal uncertainty and organizational priorities that favor flexibility over formal recognition of collective interests.

Taken together, these findings have several implications. From a theoretical perspective, they contribute to the ongoing rethinking of HRM's role in non-standard work environments and highlight the inadequacy of traditional dichotomies between employee and contractor status in capturing the realities of gig work.⁹¹ From a practical perspective, the findings suggest that HR managers can play a proactive role in developing innovative, legally compliant practices that extend basic support and engagement to gig workers without undermining organizational flexibility. This could include voluntary codes of conduct, tailored grievance procedures, and limited access to training and health and safety support.⁹²

Finally, the findings underscore the urgent need for legal and policy reform in New Zealand to clarify the rights and responsibilities of gig workers and their employers. As the Employment Court has recognized, the law must evolve to reflect the substantive realities of work relationships rather than the contractual labels imposed by platforms.⁹³ Clearer statutory guidance would not only protect vulnerable workers but also provide greater certainty for organizations and HR managers striving to align their practices with both legal obligations and ethical principles.

In conclusion, managing gig workers at the intersection of flexibility and fairness remains one of the most pressing challenges for HRM and employment law in the twenty-first

⁸⁹ Harry Arthurs, *Labour Law After Labour* (2011) 33(4) Comp Lab L & Pol'y J 627, 631–632.

⁹⁰ European Commission, *Proposal for a Directive on Improving Working Conditions in Platform Work*, COM(2021) 762 final at 2–3.

⁹¹ De Stefano & Graham, *Labour Platforms and the Gig Economy: Enhancing Social Protection of Workers and Competition of Businesses* (ILO, 2020) at 31–33.

⁹² Interview data collected by author, April–June 2025.

⁹³ *E Tū Inc v Uber B.V.*, supra note 4 at [91].

century. By acknowledging the realities of gig work and proactively addressing its inherent risks and inequities, HR managers and policymakers alike can contribute to a more just, sustainable, and effective employment relations system that meets the needs of both organizations and workers in a rapidly changing economy.

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