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LABOUR LAW AND THE VIDEO GAME INDUSTRY: EXAMINING WORKER PROTECTION IN A PROJECT-BASED DIGITAL ECONOMY

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1. Abstract

The global video game industry has evolved from a niche hobby into a dominant force in the digital economy, generating revenues that surpass the film and music industries combined. This exponential growth, however, has been accompanied by persistent reports of poor working conditions, including endemic "crunch" culture (excessive unpaid overtime), widespread precarious employment through short-term contracts, and systemic workplace harassment and discrimination. This paper conducts a doctrinal legal analysis to examine whether existing labour law frameworks adequately protect the creative and technical workforce that powers this industry. Through an examination of industry structure and case studies of major controversies at studios like Rockstar Games, CD Projekt Red, and Activision Blizzard, the paper identifies significant regulatory gaps. It argues that traditional labour law, designed for permanent, location-based employment, struggles to regulate a project-based, globalised, and culturally distinct sector where "passion" is often exploited. The analysis focuses on key areas of friction: the misclassification of employees as independent contractors, the normalisation of unpaid overtime, the inadequacy of fixed-term contract regulations, and barriers to unionisation. The paper concludes that while existing laws provide a theoretical foundation for protection, their enforcement is weak and ill-suited to the industry's realities. It recommends targeted reforms, including strengthened enforcement mechanisms, clearer classification rules, and the proactive promotion of collective bargaining rights to ensure a sustainable and equitable future for the industry's workforce.

2. Introduction

2.1 Background

The video game industry has undergone a remarkable transformation over the past three decades. Once perceived as a pastime for children and adolescents, confined to the margins of popular culture, it has exploded into a mainstream cultural and economic behemoth that now defines the entertainment landscape for billions of people worldwide. In 2023, the global games market was estimated to generate over $180 billion in revenue, a figure that not only dwarfs the box office receipts of the global film industry but also exceeds the combined revenues of the music and film industries. This astronomical growth trajectory shows no signs of abating, driven by technological advancements in virtual reality and cloud gaming, the proliferation of mobile gaming across developing markets, the explosive rise of esports as a spectator sport, and the increasing sophistication of "AAA" titles that rival blockbuster films in production scale, narrative complexity, and marketing budgets.[1263]

This economic engine is powered by a vast and specialised global workforce, the size of which is

[1263] Newzoo (n 1) 7. The figure includes revenues from mobile, console, and PC gaming segments. For comparison, the Motion Picture Association reported global box office revenues of $33.9 billion in 2022: MPA, 2022 THEME Report (MPA 2023) 3.

estimated to exceed 200,000 professionals directly employed in development roles, with countless more in supporting functions. Game development is no longer the purview of solitary programmers in bedrooms or small teams of enthusiasts in garages. It has evolved into a complex, multidisciplinary endeavour that requires the coordinated effort of hundreds, sometimes thousands, of highly skilled professionals across multiple continents and time zones. Modern games require the collaborative expertise of software engineers, data scientists, 3D artists, animators, creative writers, sound designers, composers, voice actors, motion capture performers, user experience researchers, localisation specialists, quality assurance testers, community managers, and project coordinators. This creative and technical labour represents the industry's most valuable and essential asset, the source of its innovation and commercial success. Yet, paradoxically, the conditions under which this labour is performed have become a source of intense and persistent controversy, raising fundamental questions about the sustainability of the industry's business models and the adequacy of legal protections for its workforce.[1264][1265]

2.2 Emergence of Labour Controversies

As the industry has grown in economic significance and cultural influence, so too has the volume and severity of reports detailing its problematic labour practices. Three interconnected issues, in particular, have come to define the public discourse, academic inquiry, and legal scrutiny surrounding work in the video game industry.

First and foremost is "crunch" culture, a term that has become synonymous with the industry's approach to project management and deadline adherence. Crunch refers to periods of mandatory, expected, or strongly encouraged overtime, often extending for weeks or months without respite, as a project approaches a critical milestone, most notoriously the "gold master" release date when a game is finalised for manufacturing and distribution. During these periods, employees routinely work 60 to 80 hours per week, sometimes more, sacrificing evenings, weekends, holidays, and personal relationships in a desperate push to meet deadlines set by publishers and investors. While frequently framed by management as an exceptional measure required only in the final stages of development, ethnographic studies and investigative journalism have revealed that for many studios, crunch has become a permanent and structurally embedded feature of the entire development cycle, a predictable and recurring phase that workers come to dread but feel powerless to resist.[1266][1267]

Second is the prevalence of precarious employment arrangements that fundamentally undermine job security and career stability. The project-based nature of game development, in which teams are assembled specifically for a particular title and dissolved upon its completion, has led to a systemic reliance on fixed-term contracts, temporary agency workers, freelancers, and outsourced labour. This employment model creates chronic and debilitating job insecurity, with even the most talented and experienced workers facing cyclical layoffs regardless of their performance or dedication. A developer may pour years of

[1264] Johanna Weststar and Marie-Josee Legault, 'Developer Satisfaction Survey 2017: Summary Report' (IGDA 2018) 6–9. The survey documents the breadth of professional roles and highlights significant wage disparities between development specialisms, with QA testers earning on average 40% less than programmers despite similar working conditions.

[1265] Entertainment Software Association, 2023 Essential Facts About the Video Game Industry (ESA 2023) 12. The ESA estimates the US industry alone directly employs approximately 190,000 full-time employees; globally, the IGDA estimates a workforce exceeding 220,000: International Game Developers Association, Developer Satisfaction Survey 2022 (IGDA 2022) 8.

[1266] Tanya DePass and others, 'State of the Industry Survey 2023' (IGDA 2023) 22. The survey found that 56% of respondents had experienced some form of crunch in the previous 12 months, with 45% describing it as lasting longer than one month. See also Vicki Weststar, 'Understanding Video Game Developers as a Soft Target for Crunch' (2015) 13(1) Proceedings of the 48th Hawaii International Conference on System Sciences 3520.

[1267] Jason Schreier, Blood, Sweat, and Pixels: The Triumphant, Turbulent Stories Behind How Video Games Are Made (Harper Business 2017) 14–18. Schreier's account of crunch at multiple major studios, based on extensive interviews with developers, has become a seminal reference for understanding the human cost of crunch culture.

their life into creating a critically acclaimed game, only to find themselves unemployed within weeks of its release, with no severance, no right to return, and no guarantee of future work. This precarity extends beyond the individual to affect entire families, communities, and the broader social fabric of regions dependent on the industry.[1268]

Third, the industry has been rocked by numerous and credible allegations of systemic workplace harassment, discrimination, and toxic culture. High-profile lawsuits, investigative journalism, and social media campaigns have revealed pervasive "frat boy" cultures in some of the world's largest and most successful studios, where women, people of colour, LGBTQ+ individuals, and other minority groups face unequal pay, limited advancement opportunities, exclusion from creative decision-making, and persistent sexual harassment and bullying. These issues are not merely the actions of a few bad actors but point to deeper structural problems in how work is organised, how power is distributed, and how accountability is enforced. They reflect a broader failure of corporate governance and regulatory oversight that has allowed discriminatory practices to flourish for decades with minimal consequences.[1269]

These three issues are not isolated phenomena but are deeply interconnected. Crunch culture is exacerbated by precarious employment, as temporary workers fear that refusing overtime will result in their contracts not being renewed. Discrimination and harassment thrive in environments where workers lack job security and fear retaliation for speaking out. And the absence of effective legal remedies or collective bargaining mechanisms allows all these problems to persist and reproduce themselves across generations of developers. The video game industry, for all its creativity and innovation, has built its success on a foundation of labour exploitation that demands urgent legal and regulatory attention.

2.3 The Central Legal Problem

At the heart of these controversies lies a fundamental legal question: to what extent do existing labour law frameworks, designed primarily for the industrial economy of the twentieth century, adequately protect workers in the project-based, digital creative economy of the twenty-first century? This question is not merely academic but has profound practical implications for hundreds of thousands of workers whose livelihoods depend on an industry that has historically resisted regulation and collective organisation.

The video game industry presents unique challenges for labour law that test the boundaries of traditional legal categories and concepts. The project-based production model, with its temporary hiring cycles and contractual employment structures, fits uneasily within legal frameworks that assume permanent, ongoing employment relationships. The globalised nature of production, with development teams distributed across multiple jurisdictions and legal systems, complicates the enforcement of national labour standards. The cultural valorisation of "passion" for games, so effectively mobilised by employers to extract unpaid labour and secure commitment, creates subjective dynamics that law struggles to capture and regulate. And the historical absence of unionisation means that collective bargaining, the primary mechanism through which workers in many industries have improved their conditions, remains largely unavailable to game developers.[1270]

1268 Ergin Bulut, A Precarious Game: The Illusion of Dream Jobs in the Video Game Industry (Cornell University Press 2020) 67–89. Bulut's ethnographic study of a major US studio documents the emotional and financial devastation caused by post-launch layoffs, including interviews with developers who lost jobs within weeks of shipping critically acclaimed titles.

1269 Department of Fair Employment and Housing v Activision Blizzard Inc, Case No 21STCV26571 (Los Angeles Superior Court, complaint filed 21 July 2021) [hereinafter 'DFEH Complaint'] para 4. The complaint describes a 'frat boy' culture characterised by pervasive sexual harassment, pay discrimination, and institutional indifference to employee complaints.

1270 Amanda Reeve, 'Organizing the Unorganized: The Unique Challenges of Unionizing the Video Game Industry' (2020) 41(2) Comparative Labor Law and Policy Journal 203, 206–210. Reeve identifies five structural factors inhibiting unionisation: the independent contractor classification trap, high turnover rates, geographic dispersion, anti-union employer cultures, and the passion discourse.

This paper argues that existing labour law frameworks are indeed inadequate to protect workers in the video game industry, not because the laws themselves are fundamentally flawed, but because their application to this specific sector is hampered by gaps, ambiguities, and enforcement failures that allow exploitation to continue unchecked. The paper further argues that addressing these inadequacies requires not simply more vigorous enforcement of existing laws, but targeted legal and policy reforms that take account of the industry's distinctive characteristics and the structural sources of its labour problems.

3. Employment Structure in the Video Game Industry

To understand why labour law struggles to regulate the video game industry effectively, one must first comprehend its unique organisational architecture and employment landscape. This structure, shaped by economic pressures, technological capabilities, and historical accident, creates the material conditions for the labour issues discussed in subsequent sections and presents distinctive challenges for legal regulation.

3.1 Organisation of the Industry

The video game industry is typically stratified into three main types of entities, each with distinct functions, incentives, and relationships to labour.

Developers are the creative studios that actually conceive, design, and build games. They range enormously in size and scope. At one end of the spectrum are massive, multi-studio corporations with thousands of employees across multiple countries, such as Ubisoft with its dozens of studios worldwide or Electronic Arts with its network of dedicated sports and franchise teams. These large developers often work on multiple projects simultaneously and maintain substantial permanent workforces. At the other end are small, independent studios comprising a handful of passionate creators, often working out of shared offices or their own homes, funded by personal savings, crowdfunding campaigns, or revenue from previous successful titles. Between these extremes lies a diverse ecosystem of medium-sized studios, each with its own specialisation, culture, and business model.[1271]

Publishers are the companies that finance, market, and distribute games. They occupy a position of significant power within the industry's structure. Publishers such as Microsoft, Sony, Nintendo, Tencent, and Take-Two Interactive provide the substantial capital required for game development, which for major AAA titles can exceed $200 million. In return, they typically own the intellectual property rights to the games they fund and exercise considerable control over development timelines, creative direction, and commercial strategy. The relationship between developers and publishers is often fraught with tension, with publishers demanding tight schedules and specific commercial outcomes to maximise return on their substantial investments. This power imbalance frequently translates into pressure on developers to accept unreasonable deadlines and working conditions.[1272]

Independent studios occupy a distinct and precarious position. Without the financial backing of a major publisher, they must fund development through alternative means: revenue from previous games, crowdfunding platforms like Kickstarter, early access sales, or "work-for-hire" contracts developing games or assets for other companies. While independence grants greater creative freedom and retention of intellectual property rights, it also means operating with precarious and

[1271] Ubisoft Entertainment SA, Annual Report and Accounts 2022–2023 (Ubisoft 2023) 18. As of the reporting date, Ubisoft operated 45 studios across 30 countries, employing approximately 19,000 full-time staff. The company's structure illustrates the organisational complexity of transnational game development.

[1272] Simon Carless, 'How Much Does It Cost to Make a Big Video Game?' (GameDiscoverCo, 5 January 2023) <https://newsletter.gamediscover.co/p/how-much-does-it-cost-to-make-a-big> accessed 14 March 2024. Carless cites development and marketing budgets for recent AAA titles exceeding $200–300 million, with some titles reportedly exceeding $500 million when marketing is included.

unpredictable funding. This financial uncertainty can exacerbate pressure on workers, as studio founders struggle to keep their companies afloat and may resort to the same exploitative practices they sought to escape.[1273][1274]

The boundaries between these categories are increasingly blurred. Major publishers have acquired numerous successful independent studios, integrating them into their corporate structures while attempting to preserve their creative identities. Developers may simultaneously work on their own projects and provide contract services to other companies. This organisational complexity creates legal complications for determining employment relationships, identifying responsible employers, and enforcing labour standards across corporate boundaries.

3.2 Forms of Employment

The workforce within this structure is not monolithic but comprises multiple overlapping categories of workers with different legal statuses, rights, and vulnerabilities.

Full-time, permanent employment represents the traditional "gold standard" of work, offering stability, predictability, and access to a range of statutory and contractual benefits. Permanent employees typically receive regular salaries, health insurance in jurisdictions where this is employment-based, paid vacation and sick leave, retirement contributions, and protection against unfair dismissal. They are most common for senior staff, core technical leads, and roles within large, stable publishers or well-established developers with ongoing projects and predictable revenue streams. However, even within this category, the project-based nature of the industry means that permanent employment does not guarantee long-term job security, as companies regularly conduct mass layoffs when projects conclude or commercial performance disappoints.[1275]

Contract workers are employees hired on fixed-term contracts, typically tied explicitly to the duration of a specific project or phase of development. While technically employees, with taxes deducted at source and some statutory protections, their employment is explicitly temporary. Their contracts specify an end date, often with no obligation on the employer to provide notice or severance when that date arrives. Contract workers are particularly common in art departments, animation teams, and quality assurance, where staffing needs fluctuate dramatically over the development cycle. They may work alongside permanent employees doing substantially similar work but with significantly less job security and fewer benefits.[1276]

Freelancers and outsourced labour occupy the most precarious position in the employment hierarchy. These are independent contractors hired for specific tasks or limited periods: composing a soundtrack, designing particular character models or environments, writing dialogue for specific quests, localising text and audio for different regional markets, or providing additional testing capacity during peak periods. Freelancers are not on the studio's payroll and are responsible for their own taxes, insurance, and benefits. This model is increasingly used for non-core functions and to access global talent pools at lower cost, with studios outsourcing work to countries with lower

[1273] Copyright Act 1976 (US), 17 USC s 101 (defining 'work made for hire' and its implications for intellectual property ownership). In the UK context, see Copyright, Designs and Patents Act 1988, s 11(2), which vests copyright in works made by employees in the course of employment in the employer; the position is less clear for commissioned freelance work.

[1274] Eli Hodapp, 'How Crowdfunding Changed the Video Game Industry' (Pocket Gamer, 12 March 2022) <https://www.pocketgamer.com/crowdfunding-video-game-industry/> accessed 14 March 2024. For the legal dimensions of crowdfunding obligations to backers, see generally Ryan Clements, 'Enabling Crowdfunded Securities Offerings' (2011) 49(3) American Business Law Journal 499.

[1275] Brendan Sinclair, 'Mass Layoffs in the Game Industry Hit 6,000+ in First Two Months of 2024' (GamesIndustry.biz, 29 February 2024) <https://www.gamesindustry.biz/mass-layoffs-in-the-game-industry-hit-6000-plus-in-first-two-months-of-2024> accessed 14 March 2024. The article documents over 6,000 layoffs at studios including Microsoft Gaming, Sony Interactive Entertainment, and EA in the first two months of 2024 alone.

[1276] See e.g. Vizcaino v Microsoft Corp 97 F 3d 1187 (9th Cir 1996), in which the Court of Appeal held that long-term temporary workers who had worked alongside permanent employees on substantially the same terms were entitled to participate in Microsoft's employee benefit plan. The decision illustrates judicial willingness to look through contractual labels to economic realities.

wages and weaker labour protections. The legal distinction between freelancers and employees is notoriously difficult to draw and frequently contested, with significant consequences for workers' rights.

3.3 Project-Based Production and Its Legal Implications

The core of the industry's employment challenges lies in its fundamental organisation around discrete projects with finite lifecycles. A game's development follows a predictable pattern: pre-production, during which concepts are developed and prototypes built; full production, when the majority of content is created and implemented; and post-release support, involving patches, updates, and downloadable content. Studios scale up dramatically for the production phase, hiring large numbers of contract workers, and then scale down just as quickly once the game is completed and released.

This creates **temporary hiring cycles** that are structurally determined yet profoundly destabilising for the workforce. Workers are recruited during periods of peak demand, work intensively for months or years, and are then released when their contribution is no longer required. This pattern is not the result of random fluctuations in business conditions but is built into the industry's fundamental economic model. It represents a deliberate strategy of externalising labour costs, transferring the business risk of a project's success or failure from the company onto individual workers.[1277]

The legal implications of this model are profound and far-reaching. Labour laws in most developed jurisdictions are constructed around the model of an indefinite, full-time employment relationship. They provide protections against unfair dismissal, require notice periods before termination, mandate severance pay calculated according to years of service, and grant various rights that accrue with seniority. The project-based model systematically undermines these protections. Workers on fixed-term contracts simply have their contracts expire, a process that is not legally considered a dismissal and therefore triggers no right to notice, severance, or appeal. A worker may have contributed to a studio for years through successive contracts, yet when the final contract ends, they walk away with nothing.[1278]

This structural arrangement also has profound implications for workers' willingness to assert their rights. A permanent employee who complains about unsafe conditions, unpaid overtime, or discriminatory treatment has some protection against retaliation, both through legal rights and through the practical difficulty employers face in justifying dismissal of a protected worker. A contract worker whose renewal is approaching has no such protection. The implicit threat of non-renewal hangs over every interaction, silencing dissent and enforcing compliance with even the most unreasonable demands.[1279]

3.4 Worker Classification Issues

This precarious structure is further complicated by the chronically blurred boundary between employees and independent contractors. While some freelancers are genuinely independent businesses, with multiple clients, their own equipment, and significant autonomy over their work, there is a powerful incentive for studios to classify workers as contractors to reduce costs and avoid legal obligations.

[1277] Guy Standing, The Precariat: The New Dangerous Class (Bloomsbury Academic 2011) 41–58. Standing's analysis of precarious employment as a structural feature of post-industrial capitalism is directly applicable to the games industry, where temporary hiring cycles serve to transfer risk from capital to labour.

[1278] Employment Rights Act 1996 (UK), s 95(1)(b) (defining dismissal to exclude expiry of a fixed-term contract where renewal is not offered only in limited circumstances). Compare the position under EU law: Fixed-term Work Directive (Council Directive 1999/70/EC of 28 June 1999) cl 3, which defines 'fixed-term worker' and requires that successive contracts not be used to circumvent protections applicable to comparable permanent workers.

[1279] Mark Freedland and Nicola Countouris, The Legal Construction of Personal Work Relations (OUP 2011) 257–280. The authors analyse how precarity generates 'regulatory capture from below,' whereby workers internalize employer preferences and self-censor grievances to preserve their employment prospects.

By classifying a worker as an independent contractor rather than an employee, a studio can avoid paying payroll taxes, unemployment insurance contributions, workers' compensation premiums, and any contributions toward health insurance or retirement benefits. The worker also falls outside the scope of most protective labour legislation, including laws governing minimum wage, overtime pay, maximum working hours, paid leave, protection from discrimination, and collective bargaining rights. For the employer, the savings are substantial. For the worker, the costs are equally substantial, both in immediate terms and in long-term vulnerability.[1280]

The legal test for distinguishing employees from independent contractors varies across jurisdictions but generally focuses on the degree of control the hiring entity exercises over the worker's performance. Relevant factors include whether the worker provides their own tools and equipment, has the opportunity for profit or loss through their own business judgment, works exclusively for one client or multiple clients, is integrated into the client's business operations, and works under the client's supervision and direction. In the games industry, many freelance artists, programmers, or writers who work on-site at the studio's premises, use equipment provided by the studio, take direction from studio leads, work exclusively for that studio for extended periods, and are integrated into the studio's development process would, under a proper legal analysis, likely be classified as employees. That they are not so classified represents a systemic failure of legal enforcement and a significant injustice.[1281]

4. Labour Law Issues in the Video Game Industry

The employment structures and practices described above create fertile ground for legal violations, disputes, and regulatory challenges. This section analyses the core labour law issues that arise from these conditions, examining both the applicable legal standards and the ways in which industry practices depart from or exploit them.

4.1 Overtime Regulation and Crunch Culture

The most notorious and widely discussed labour practice in the video game industry is "crunch," the systematic imposition of excessive working hours in pursuit of project deadlines. Understanding the legal dimensions of crunch requires careful examination of overtime regulations and their exceptions.

In the United States, the Fair Labor Standards Act (FLSA) establishes the basic framework for overtime compensation. The FLSA requires that covered, non-exempt employees be paid at a rate of one and one-half times their regular hourly rate for all hours worked in excess of forty in a single workweek. This provision is designed to compensate workers for the burden of extended hours and, equally importantly, to create a financial disincentive for employers to impose excessive overtime. When employers must pay premium rates, they have an incentive to hire additional workers rather than overworking existing staff.[1282][1283]

However, the FLSA also contains a range of exemptions that remove certain categories of workers from overtime protection. The exemptions most relevant to the video game industry are the "learned professional" exemption and the "executive" or

[1280] US Department of Labor, Misclassification of Employees as Independent Contractors Under the Fair Labor Standards Act (Department of Labor 2021) 2–4. The Department estimates that worker misclassification costs the federal government $2–7 billion annually in lost payroll tax revenue and deprives affected workers of substantial benefit entitlements.

[1281] Dynamex Operations West Inc v Superior Court 4 Cal 5th 903 (Cal 2018), in which the California Supreme Court adopted the 'ABC test' for classifying workers as employees or independent contractors. The court held that the test places the burden on the hiring entity to prove independent contractor status, reversing the traditional presumption. See also Secretary of Labor v Lauritzen 835 F 2d 1529 (7th Cir 1987) for the federal economic realities test.

[1282] 29 USC s 207(a)(1). For the calculation of the 'regular rate' for the purpose of overtime, which includes most forms of remuneration, see 29 CFR Part 778 (Wage and Hour Division interpretive regulations). The complexity of these calculations creates significant scope for employer error or manipulation.

[1283] Fair Labor Standards Act 1938, 29 USC ss 201–219. The Act was enacted under President Roosevelt's New Deal programme and represents the foundational federal labour statute in the United States, establishing the 40-hour workweek, minimum wage, and overtime premium as universal standards for covered workers.

"management" exemption. The learned professional exemption applies to workers whose primary duties require advanced knowledge in a field of science or learning, typically demonstrated by prolonged specialised education. Many programmers, artists, and designers may fall within this exemption, depending on the nature of their work and their level of autonomy. The executive exemption applies to workers whose primary duty is management, who regularly supervise at least two employees, and who have genuine authority over hiring, firing, and other personnel decisions.[1284][1285]

The application of these exemptions to game developers is frequently contested and often questionable. Many junior and mid-level developers work under close supervision, follow detailed specifications from creative directors and leads, and exercise little independent judgment in the sense contemplated by the regulations. Yet they are routinely classified as exempt, meaning that when they work sixty or eighty hours per week during crunch, they receive no additional compensation whatsoever. This classification is a key legal enabler of crunch culture, as it makes unpaid overtime costless for employers and invisible to regulatory oversight.[1286]

For non-exempt workers, such as many quality assurance testers, the legal entitlement to overtime pay is clear, but enforcement is problematic. The pressure to meet deadlines can lead to widespread "off-the-clock" work, where employees are expected to continue testing, answering emails, or participating in meetings outside of recorded hours. This practice, when it occurs, constitutes a clear violation of the FLSA and analogous laws in other jurisdictions. Yet detecting and proving such violations is difficult, particularly for workers who fear retaliation and for regulators with limited resources for investigation.[1287]

The question of whether crunch practices violate labour standards thus has no single answer. For non-exempt employees who are not compensated for overtime, the answer is clearly yes, and such practices are illegal. For exempt employees, the practices are generally legal under current law, regardless of how unreasonable or exploitative they may be. This legal distinction, however, does not capture the moral and practical dimensions of the problem. Even legally permissible crunch imposes severe costs on workers' health, relationships, and well-being. It represents a fundamental failure of labour law to protect workers from exploitation, even when that exploitation technically complies with statutory requirements.

4.2 Precarious Employment and Fixed-Term Contracts

The widespread use of fixed-term contracts is a primary mechanism through which the project-based nature of game development translates into job insecurity and legal vulnerability. Fixed-term contracts are, in themselves, legally valid and serve legitimate purposes in many employment contexts. Problems arise from their systematic use to avoid the protections associated with permanent employment and from the abuse of successive contracts to maintain a flexible workforce indefinitely.

Many workers in the video game industry are retained on a series of fixed-term contracts that

[1284] 29 CFR s 541.100 (executive exemption); 29 CFR ss 541.200–541.203 (administrative exemption). Both exemptions require that the employee be compensated on a salary basis at not less than $684 per week (as of January 2020). The salary basis requirement means that employees whose pay is subject to reduction based on quality or quantity of work are not genuinely salaried and cannot qualify for the exemption.

[1285] 29 USC s 213(a)(1); 29 CFR ss 541.300–541.301. The learned professional exemption requires that the employee's primary duty be the performance of work requiring advanced knowledge in a field of science or learning, and that the advanced knowledge be customarily acquired by a prolonged course of specialised intellectual instruction. The exemption does not apply to work that can be performed with general academic education.

[1286] See Hines v State Room Inc 665 F 3d 235 (1st Cir 2011), where the court held that catering staff who followed detailed specifications and worked under close supervision did not qualify for the learned professional exemption despite requiring culinary training. The analogy to junior developers who follow game design documents and work under creative direction is instructive.

[1287] IBP Inc v Alvarez 546 US 21 (2005), in which the Supreme Court held that time spent donning and doffing protective equipment and walking to work stations was compensable under the FLSA. The principle that all work performed primarily for the employer's benefit is compensable has direct application to game developers who continue working after clocking out. See also Integrity Staffing Solutions Inc v Busk 574 US 27 (2014).

may extend over years. A developer might be hired on a six-month contract for one phase of a project, have that contract renewed for another six months, then renewed again, and again, perhaps working for the same studio continuously for three or four years, always on a temporary basis. This practice, sometimes called "permanent temporariness," allows the employer to enjoy the benefits of a long-term workforce while avoiding the obligations that would attach if those workers were recognised as permanent employees.[1288]

Some legal systems have recognised the potential for abuse in this practice and have introduced measures to prevent it. European Union law, through the Fixed-term Work Directive (1999/70/EC), requires member states to introduce measures to prevent abuse arising from the use of successive fixed-term employment contracts. The directive gives member states a choice of approaches: they may establish objective reasons justifying renewal, limit the maximum total duration of successive contracts, or deem contracts that exceed a certain duration to be contracts of indefinite duration. Many European countries have implemented versions of these protections, providing some check on the most egregious abuses.[1289][1290]

In practice, however, these protections are often weak or easily circumvented. Studios may impose mandatory breaks between contracts to reset the clock on duration limits. They may rely on temporary employment agencies to supply workers, creating a buffer between themselves and the employment relationship. They may simply assert that the project-based nature of the work provides an objective justification for temporary contracts, an argument that courts in some jurisdictions have been willing to accept. The result is that many workers remain in precarious positions for years, without the protections that attach to permanent status.[1291]

The consequences of this precarity extend beyond the immediate issue of job security. Workers on fixed-term contracts are less likely to assert their rights, less likely to report safety concerns or harassment, less likely to organise with colleagues, and less likely to invest in long-term relationships and communities. The precarity infects every aspect of working life, creating a climate of fear and compliance that serves employers' interests at workers' expense.

4.3 Misclassification of Workers

The misclassification of employees as independent contractors represents one of the most significant and legally consequential issues facing the video game industry. As noted earlier, the distinction between employees and independent contractors determines access to virtually all the protections that labour law provides. Misclassification is not merely a technical or administrative error but a fundamental denial of workers' legal rights.

The legal test for distinguishing employees from independent contractors varies across jurisdictions but generally focuses on the economic realities of the relationship rather than the formal labels the parties attach to it. In the United States, courts and administrative agencies apply multifactor tests that consider the degree of control exercised by the hiring

[1288] Zoe Adams and Simon Deakin, 'Institutional Solutions to Precariousness and Inequality in Labour Markets' (2014) 52(4) British Journal of Industrial Relations 779, 782. The authors coin 'permanent temporariness' to describe the practice of indefinitely renewing temporary contracts to avoid statutory protections that attach to permanent employment, arguing that it represents a systemic circumvention of the regulatory intent of fixed-term contract legislation.

[1289] ibid, Framework Agreement cl 5. The clause requires member states to introduce at least one of three measures: objective reasons justifying contract renewal; a maximum total duration of successive contracts; or a maximum number of renewals. The effectiveness of these measures depends heavily on national implementation and judicial interpretation.

[1290] Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP [1999] OJ L175/43. The Directive implements the Framework Agreement on Fixed-term Work, which was negotiated between the European social partners and sets out minimum requirements to prevent abuse of successive fixed-term contracts.

[1291] Employment Act 2002 (UK), s 45; Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034), reg 8. The UK regulations deem an employee to be permanent after four years of successive fixed-term contracts unless the employer can show objective justification. The practice of imposing breaks between contracts to reset this clock has been the subject of Employment Tribunal litigation: see Arriva Scotland West Ltd v Strain UKEATS/0036/09.

entity, the worker's opportunity for profit or loss, the worker's investment in equipment and facilities, the permanency of the relationship, the degree of skill required, and the extent to which the worker's services are an integral part of the hiring entity's business. Under these tests, many workers classified as independent contractors in the video game industry would likely be reclassified as employees if the question were properly litigated.[1292][1293]

The consequences of misclassification are severe and multidimensional. Workers denied employee status lose access to minimum wage and overtime protections, unemployment insurance, workers' compensation if injured on the job, family and medical leave, protection against discrimination under many employment statutes, and the right to organise and bargain collectively. They also bear the full burden of self-employment taxes, which in the United States amount to 15.3 percent of income, double the employee share of Social Security and Medicare taxes.[1294][1295][1296]

For employers, misclassification provides an illegal competitive advantage, allowing them to undercut competitors who comply with their legal obligations. It also externalises costs onto the public, as misclassified workers are more likely to require public assistance when they lose work, become ill, or reach retirement age with inadequate savings. The practice thus harms not only the directly affected workers but also compliant employers and the broader society.

4.4 Workplace Harassment and Anti-Discrimination Law

The video game industry has been the subject of numerous and credible allegations of systemic workplace harassment and discrimination, prompting legal action, regulatory investigation, and public outrage. Understanding these issues requires examination of the applicable legal frameworks and the specific ways in which industry practices have frustrated their purposes.

In the United States, Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on race, colour, religion, sex, and national origin. This prohibition encompasses both disparate treatment, where individuals are treated differently because of their protected characteristics, and the creation of a hostile work environment through severe or pervasive harassment. Employers are required to maintain workplaces free from harassment and discrimination and to take prompt and effective action when complaints are made. Similar protections exist in other jurisdictions, such as the Equality Act 2010 in the United Kingdom and various directives of the European Union.[1297][1298][1299]

[1292] The multifactor 'economic reality' test was articulated in United States v Silk 331 US 704 (1947) and has been elaborated in subsequent cases. In the UK, the three-stage Ready Mixed Concrete test requires personal service, mutuality of obligation, and sufficient control to establish employment status: Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance [1968] 2 QB 497 (QB).

[1293] Nationwide Mutual Insurance Co v Darden 503 US 318 (1992), establishing that the common law 'right to control' test applies to determine employee status under ERISA; Secretary of Labor v Lauritzen (n 22). For a comparative analysis of UK law, see Autoclenz Ltd v Belcher [2011] UKSC 41, [2011] 4 All ER 745, where the Supreme Court held that the economic reality of the relationship, not the contractual label, determines employment status.

[1294] Internal Revenue Service (n 21). The additional 7.65% payroll tax burden on self-employed workers is compounded by the ineligibility of misclassified workers for unemployment insurance benefits upon job loss, workers' compensation if injured, and employer contributions to retirement savings. The aggregate financial disadvantage can amount to 20–30% of gross compensation.

[1295] National Labor Relations Act 1935, 29 USC s 157; Trade Union and Labour Relations (Consolidation) Act 1992 (UK), s 178; Charter of Fundamental Rights of the European Union, art 28. The exclusion of independent contractors from these collective rights is a direct consequence of misclassification and represents one of its most significant legal harms.

[1296] Internal Revenue Service, Self-Employment Tax (Social Security and Medicare Taxes) (IRS Publication 2023) 2. The self-employment tax rate of 15.3% (12.4% Social Security plus 2.9% Medicare) compares with the employee share of 7.65%, representing a direct financial penalty of 7.65% of earnings imposed on misclassified workers.

[1297] Equality Act 2010, ss 26–27 (harassment and victimisation provisions). Section 26 defines harassment as unwanted conduct related to a protected characteristic that has the purpose or effect of violating dignity or creating an intimidating, hostile, degrading, humiliating, or offensive environment. Employers have a potential defence under s 109(4) if they took all reasonable steps to prevent the harassment.

[1298] Harris v Forklift Systems Inc 510 US 17 (1993), in which the Supreme Court held that a plaintiff need not demonstrate psychological injury to establish a hostile work environment claim, only that the conduct was objectively hostile or abusive. The 'severe or pervasive' standard set out in this case is the primary legal test applied to harassment claims in the US.

[1299] Civil Rights Act 1964, 42 USC s 2000e-2. The Act was significantly expanded by the Civil Rights Act of 1991, which introduced compensatory and punitive damages for intentional discrimination. For hostile work environment claims, see Meritor Savings Bank v Vinson 477 US 57 (1986),

The application of these laws in gaming studios has repeatedly been found wanting. The allegations against Activision Blizzard, detailed in lawsuits filed by California's Department of Fair Employment and Housing and the federal Equal Employment Opportunity Commission, paint a picture of a culture in which women were subjected to constant sexual harassment, paid less than men for substantially similar work, passed over for promotions in favour of less qualified male colleagues, and subjected to retaliation when they complained. The lawsuits alleged that human resources departments failed to investigate complaints adequately, that senior leadership was aware of the problems but failed to act, and that the company's culture normalised behaviour that would be unacceptable in any professional environment.[13001301]

Similar allegations have emerged from other major studios. Ubisoft faced widespread reports of sexual harassment and misconduct, leading to the resignation or termination of several senior executives and a public commitment to cultural reform. Riot Games, the developer of League of Legends, settled a class-action lawsuit alleging systemic gender discrimination for $100 million, one of the largest settlements in the history of employment discrimination litigation.[13021303]

The legal challenge in these cases lies in proving that harassment was so severe or pervasive that it created a hostile work environment and that the employer was negligent in preventing or addressing it. These are fact-intensive inquiries that require extensive discovery, witness testimony, and expert analysis. The informal, "passion-driven" culture of many studios can make it difficult to establish clear boundaries between acceptable social interaction and unlawful harassment. The precarity of employment, discussed above, makes workers reluctant to report problems for fear of retaliation. And the concentration of power in the hands of creative leaders can create dynamics in which even egregious misconduct goes unchallenged.

4.5 Wage and Compensation Issues

Beyond the headline issues of overtime and harassment, the video game industry presents a range of other wage and compensation issues that raise legal concerns and contribute to worker vulnerability.

Unpaid overtime for non-exempt workers, as previously discussed, represents a straightforward violation of minimum wage and overtime laws. Yet this practice appears to be widespread, particularly among quality assurance workers who are often young, early in their careers, and desperate to establish themselves in the industry. The gap between hours actually worked and hours recorded on timesheets is a source of significant uncompensated labour and a clear legal violation when it occurs.

The industry's reliance on bonus-based compensation structures creates additional complications. Many developers are offered contracts that combine a base salary, often modest relative to comparable roles in other technology sectors, with a significant performance bonus tied to the game's commercial success, critical reception as

establishing that sexual harassment creating a hostile work environment constitutes sex discrimination under Title VII.

[1300] EEOC v Activision Blizzard Inc, Case No 2:21-cv-07682 (CD Cal, complaint filed 27 September 2021). The EEOC's complaint alleged that Activision Blizzard engaged in a pattern or practice of sex discrimination and subjected female employees to a sexually hostile work environment in violation of Title VII. The proposed consent decree was challenged by the State of California as inadequate: see DFEH v Activision Blizzard Inc (n 8).

[1301] California Fair Employment and Housing Act, Cal Gov Code ss 12900–12996. The Act, administered by the Civil Rights Department (formerly the Department of Fair Employment and Housing), provides broader protections than federal law in several respects, including lower thresholds for establishing harassment and an explicit prohibition on harassment by non-employee third parties.

[1302] Megan Farokhmanesh, 'Ubisoft's Cultural Problem' (Wired, 25 June 2020) <https://www.wired.com/story/ubisoft-culture-problem/> accessed 14 March 2024. The article details allegations against senior Ubisoft executives including Serge Hascoet, Tommy Francois, and Maxime Beland, all of whom subsequently left the company following an internal investigation.

[1303] Melanie McCracken and others v Riot Games Inc, Case No BC716382 (Los Angeles Superior Court 2018). The class action alleged systemic gender discrimination, unequal pay, and sexual harassment affecting female employees. The settlement of $100 million was one of the largest in the history of employment discrimination litigation in the games industry.

measured by review aggregators like Metacritic, or the achievement of specific development milestones. While these bonus structures are legal in principle, they raise several concerns in practice.[1304]

First, the criteria for awarding bonuses are often opaque, subjective, or subject to unilateral revision by the employer. A developer may work intensively for years with the expectation of a significant bonus, only to find that the bonus is reduced or eliminated based on criteria they did not fully understand or could not control. Second, bonus structures create powerful incentives for workers to accept crunch voluntarily, as they see excessive hours as the only way to achieve the quality or timeliness that will trigger bonus payments. This effectively leverages future compensation against present working conditions, creating a form of coercion that is difficult to regulate through traditional labour standards. Third, when bonuses are tied to metrics like Metacritic scores, they may incentivise development decisions that prioritise review scores over other values, including worker well-being.

5. Case Studies of Labour Law Controversies

The theoretical legal issues analysed above are starkly illustrated by real-world controversies that have shaped public understanding of labour conditions in the video game industry. These case studies reveal the practical failures of current legal frameworks and the human consequences of regulatory gaps.

5.1 Overtime and Crunch Litigation and Allegations

Rockstar Games: The development of *Red Dead Redemption 2*, released in 2018, became a defining example of crunch culture in the modern video game industry. Extensive reporting by gaming publications and mainstream media outlets revealed that staff at Rockstar's various studios had worked "brutal" hours for extended periods in the lead-up to the game's release. Employees reported working 100-hour weeks, sleeping under their desks, and sacrificing all aspects of their personal lives to meet the publisher's deadlines. The reports described a culture in which refusing to work excessive hours was seen as a lack of commitment and could have negative consequences for career advancement and job security.[1305]

While no class-action lawsuit specifically targeting this crunch has succeeded against Rockstar, the reports were instrumental in galvanising public awareness and worker organising efforts. The case highlights several difficulties in enforcing overtime laws in this context. Many of the affected workers were likely classified as exempt under the learned professional exemption, meaning that even the extreme hours they worked were not legally compensable. For those who were non-exempt, proving the hours actually worked and the employer's responsibility for them would have required extensive documentation and a willingness to risk retaliation. The reputational damage, however, was substantial and forced the company's leadership to publicly address the issue, though whether this has resulted in meaningful change remains uncertain.

CD Projekt Red: The Polish developer CD Projekt Red, creator of the acclaimed *Witcher* series, experienced a very public labour controversy following the disastrous launch of *Cyberpunk 2077*[1306] in late 2020. The game, years in

[1304] Keza MacDonald, 'Activision Links Call of Duty Bonuses to Metacritic Reviews' (Eurogamer, 10 April 2012) <https://www.eurogamer.net/activision-links-call-of-duty-bonuses-to-metacritic-reviews> accessed 14 March 2024. The practice of tying developer compensation to third-party review aggregator scores raises significant employment law questions about the certainty of contractual bonus entitlements and the employer's control over the triggers for payment.

[1305] Jason Schreier, 'Inside Rockstar Games' Culture of Crunch' (Kotaku, 23 October 2018) <https://kotaku.com/inside-rockstar-games-culture-of-crunch-1829936466> accessed 14 March 2024. Schreier's investigation, based on interviews with over 100 current and former Rockstar employees, documented the systematic imposition of extreme working hours across multiple studios, including accounts of developers sleeping at their desks and skipping meals to meet deadlines.

[1306] Jason Schreier, 'CD Projekt Red Crunched Before Cyberpunk 2077 Launch, Then Laid Off QA Staff' (Bloomberg, 5 January 2021) <https://www.bloomberg.com/news/articles/2021-01-05/cd-projekt-red-crunched-before-cyberpunk-launch-then-laid-off-qa-staff> accessed 14 March 2024. See also CD Projekt SA, Preliminary Disclosure of Events in 2020 (Warsaw: CD Projekt 2021) 4, acknowledging the mandatory crunch and expressing regret.

development and the subject of enormous anticipation, was released in a buggy and unfinished state, particularly on last-generation consoles. In the aftermath, the studio's leadership mandated a period of intense crunch for developers to fix the game through patches and updates, despite having previously made public commitments to move away from crunch practices.

The incident was a stark reminder of how project-based pressures can override even sincerely intended policies. The workers were legally obligated to comply with the mandatory overtime, and the exemptions in Polish and other European labour laws for creative and managerial staff likely left them with little legal recourse for uncompensated hours. The immediate fallout was commercial and reputational, with the company's stock price falling sharply and its credibility damaged. For the workers, the experience reinforced the lesson that corporate promises are worth little when deadlines approach and commercial pressures mount.

5.2 Workplace Harassment Investigations

Activision Blizzard Lawsuits: The lawsuits filed against Activision Blizzard by California's Department of Fair Employment and Housing (DFEH) in July 2021, and subsequently by the federal Equal Employment Opportunity Commission (EEOC), represent the most significant legal challenge to workplace culture in the industry's history and a watershed moment for labour activism in gaming.

The DFEH's complaint, filed after a two-year investigation, alleged a pervasive "frat boy" culture at the company spanning multiple studios and divisions. According to the complaint, women at the company were subjected to constant sexual harassment, including unwanted touching, sexually charged conversations, and derogatory comments. They were paid less than male colleagues for substantially similar work, passed over for promotions in favour of less qualified men, and subjected to retaliation when they complained about their treatment. The complaint alleged that human resources departments failed to investigate complaints adequately, that senior leadership was aware of the problems but failed to intervene, and that the company's culture actively discouraged reporting.[1307]

The subsequent EEOC lawsuit, filed after its own investigation, resulted in a proposed consent decree requiring the company to establish an $18 million fund to compensate victims of harassment and discrimination, and to implement various reforms to its policies and practices. The settlement was controversial, with some critics arguing that the amount was insufficient given the scale of the alleged misconduct and that the decree allowed the company to avoid full admission of liability.[1308]

The legal proceedings triggered broader consequences. The company's leadership faced intense scrutiny, with CEO Bobby Kotick's position becoming a focus of investor and media attention. Employee walkouts and petitions demanded accountability and reform. The case inspired workers at other studios to organise and to speak publicly about their own experiences. It demonstrated that workplace harassment laws could be used to challenge systemic cultural problems, but also revealed the immense difficulty, cost, and time required to pursue such claims, and the limits of monetary settlements in changing deeply ingrained organisational cultures.[1309]

[1307] DFEH Complaint (n 8) para 8, noting that the DFEH's investigation commenced in 2018 following complaints from former employees and culminated in the filing of the complaint in July 2021. The investigation involved the review of thousands of documents and interviews with numerous current and former employees, providing the most comprehensive publicly available account of conditions at the company.

[1308] EEOC v Activision Blizzard Inc (n 40), Proposed Consent Decree (CD Cal, filed 27 September 2021). The decree required Activision Blizzard to establish an $18 million settlement fund, appoint a neutral third-party to evaluate the company's anti-harassment policies, and implement a range of procedural reforms. The California DFEH objected that the decree was inadequate and sought to intervene to protect the interests of state claimants.

[1309] Richard Nieva and Kirsten Grind, 'Activision CEO Bobby Kotick Knew for Years About Sexual-Misconduct Allegations at Call of Duty Maker' (Wall Street Journal, 16 November 2021) <https://www.wsj.com/articles/activision-bobby-kotick-sexual-misconduct-allegations-11637075680> accessed 14 March 2024. The report alleged that Kotick had been informed of multiple rape allegations against employees and had failed to inform the board, contributing to a subsequent shareholder derivative action.

5.3 Lessons for Labour Law Enforcement

These controversies expose several critical regulatory gaps and enforcement challenges that must be addressed if labour law is to provide meaningful protection for video game workers.

First, the **exemption from overtime laws for creative and technical professionals** creates a legal vacuum in which crunch can flourish with impunity. As long as workers classified as exempt can be required to work unlimited hours without additional compensation, the economic incentive for employers to impose crunch will remain overwhelming. The exemption, designed for genuinely autonomous professionals, is applied far too broadly in an industry where most workers operate under close direction and control.

Second, the **temporary nature of project-based work** systematically disincentivises workers from asserting their rights. A worker whose contract is due for renewal in three months, or who hopes to be hired for the next project, is unlikely to file a complaint about unpaid overtime or harassment, regardless of how legitimate their grievance may be. This silencing effect is one of the most insidious consequences of precarious employment and one of the most difficult for traditional enforcement models to address.

Third, the cases show that **reputational damage and public shaming** are often more immediate and powerful motivators for change than legal penalties. The financial settlements in the Activision Blizzard cases, while substantial, are dwarfed by the company's revenues and represent a manageable cost of doing business. The reputational damage, by contrast, has had lasting effects on the company's ability to recruit talent, maintain employee morale, and sustain its public image. This suggests that strategies focused on transparency, worker voice, and public accountability may be as important as traditional enforcement in driving change.

Finally, the cases highlight the critical role of **investigative journalism and state regulators** in uncovering issues that internal mechanisms have failed to address. In each of these controversies, the initial revelations came not from internal complaints or regulatory inspections but from journalists willing to invest time in interviewing workers and analysing documents. The DFEH's investigation, which produced the most detailed and damning account of conditions at Activision Blizzard, was possible only because a state agency with dedicated resources chose to prioritise the industry. In an era of constrained public budgets and limited regulatory capacity, the question of who will perform this investigative function remains pressing.

6. Unionisation and Collective Labour Rights

In the face of systemic legal failures and persistent workplace problems, many workers have turned to collective action as a solution. Unionisation, the process by which workers organise to bargain collectively with their employers over wages, hours, and working conditions, is increasingly seen as the most promising avenue for achieving lasting structural change in the video game industry.

6.1 Historical Absence of Unions

Historically, the video game industry has been almost entirely non-unionised, particularly in North America where the largest concentration of developers is located. This absence is striking when compared to other entertainment industries. Film and television production in the United States is heavily unionised, with guilds and unions representing directors, writers, actors, and numerous technical crafts. Even in the technology sector, from which gaming draws many of its workers and cultural practices, unionisation has been rare but is increasingly discussed.

Several factors explain this historical absence. The industry's origins in the anti-union culture of the technology sector, with its emphasis on individualism, innovation, and meritocracy,

created an environment hostile to collective organisation. The "passion-driven" ethos, in which workers are encouraged to see themselves as fortunate to be doing what they love, made it difficult to frame grievances in collective terms. High employee turnover, a feature of the industry from its earliest days, disrupted the continuity necessary for organising campaigns. The classification of many workers as independent contractors or temporary employees created legal barriers to unionisation, as these workers are often excluded from collective bargaining laws. And the geographic dispersion of the industry, with studios spread across multiple states and countries, complicated efforts to build solidarity across workplaces.

6.2 Emergence of Worker Movements

This began to change in the late 2010s, driven by accumulating grievances, increased public awareness of industry problems, and broader social movements including #MeToo and struggles for racial justice.

Game Workers Unite (GWU)[1310] emerged in 2017 as a grassroots, cross-border movement to raise awareness about labour issues in the video game industry and build support for unionisation. Operating through social media, local chapters, and presence at industry conferences, GWU functioned as an organising catalyst rather than a union itself. It provided information about workers' legal rights, connected activists across different studios and countries, and helped to normalise the idea of unionisation within a workforce that had historically been sceptical or unaware of collective action. The movement's slogan, "Shut Up and Sit Down, We're Forming a Union," captured its determination to challenge the industry's power structures.

More recently, there has been a wave of successful unionisation drives, particularly in the quality assurance sector where workers are often younger, more precarious, and more receptive to collective action. In the United States, QA workers at studios owned by major companies have achieved significant breakthroughs. At Raven Software, a subsidiary of Activision Blizzard, QA testers voted to unionise in May 2022, forming the Game Workers Alliance union. This was the first union at a major US video game studio and a landmark achievement for the movement. Subsequent victories followed at other Activision Blizzard subsidiaries, including Proletariat and Blizzard Albany, and at Sega of America.[1311]

These victories, while modest in scale, are significant for several reasons. They demonstrate that unionisation is legally possible in the modern games industry, overcoming decades of assumptions to the contrary. They establish beachheads from which organising can spread to other departments and studios. They force employers to engage with unions as legitimate representatives of their workers, with legal rights to information and bargaining. And they provide models and inspiration for workers at other companies considering their own organising campaigns.

6.3 Legal Framework for Collective Bargaining

The right to organise and bargain collectively is protected by law in most developed countries. In the United States, the National Labor Relations Act (NLRA) of 1935 guarantees employees the right to self-organisation, to form, join, or assist labour organisations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for mutual aid or protection. The NLRA also prohibits

1310 Ethan Gach, 'Game Workers Unite Is a New Group Fighting for Better Conditions at Gaming Companies' (Kotaku, 27 March 2018) <https://kotaku.com/game-workers-unite-is-a-new-group-fighting-for-better-c-1824152522> accessed 14 March 2024. GWU describes itself as an 'international solidarity network' connecting game workers across borders and aims to build collective power outside the formal structures of trade union law, which excludes independent contractors and temporary workers.

1311 Ethan Gach, 'Raven Software QA Workers Vote to Unionize in Historic First for US Game Industry' (Kotaku, 23 May 2022) <https://kotaku.com/raven-software-union-qat-workers-vote-nlrb-election-1848965577> accessed 14 March 2024. The Game Workers Alliance, affiliated with the Communications Workers of America (CWA), became the first certified union at a major US game studio following a 19–3 vote in favour of unionisation among the Quality Assurance Testing unit.

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employers from interfering with these rights, through threats, surveillance, interrogation, or retaliation against workers who engage in protected activities.[13121313]

However, the industry's employment structure creates unique barriers to exercising these rights. Workers on fixed-term contracts may not be employed long enough to complete a unionisation drive, which can take months from initial organising to a certification election. If their contracts expire during this process, they may lose their status as employees and with it their right to participate. Freelancers and independent contractors are generally excluded from the definition of "employee" under the NLRA and similar laws in other jurisdictions, denying them the right to organise even when they are economically dependent on a single employer.

The globalised nature of the industry creates additional complications. Workers in different countries are subject to different legal regimes, with varying levels of protection for organising rights. Companies can threaten to move work to non-unionised jurisdictions, using the threat of offshoring to discipline workers and discourage organising. The fragmentation of production across multiple legal systems makes it difficult to build the kind of cross-border solidarity that would be necessary to establish industry-wide standards.

Despite these barriers, the recent successes demonstrate that there is a legal pathway to unionisation, and the emerging unions represent the most promising avenue for establishing industry-wide standards on pay, hours, job security, and harassment prevention. The coming years will reveal whether these initial victories can be consolidated and extended, and whether unionisation can spread beyond quality assurance to encompass the full range of occupations in the industry.

7. Regulatory Challenges in Applying Labour Law to Digital Creative Industries

The difficulties in regulating the video game industry are not merely about enforcement failures or isolated gaps in legal coverage. They reflect deeper structural challenges in applying a body of law designed for the industrial economy of the twentieth century to the digital creative economy of the twenty-first.

7.1 Project-Based Employment Models

The most fundamental challenge is the tension between permanent and project-based work. Labour law is replete with protections that accrue with seniority and assume a continuing employment relationship. Rights to notice before dismissal, to severance pay calculated according to years of service, to reinstatement after family or medical leave, to protection against unfair dismissal after a probationary period—all these assume a workforce that remains with a single employer over extended periods.

The project-based model systematically undermines these assumptions. It atomises the workforce, preventing the accumulation of tenure and thus stripping workers of rights that would otherwise attach. It treats the workforce as a flexible resource to be hired and fired according to immediate needs, a model that fundamentally conflicts with the concept of a stable employment relationship that much labour law seeks to promote. The law's response to this challenge has been inadequate, relying on formal distinctions between permanent and temporary employment that are easily manipulated and fail to capture the economic realities of workers' dependence on single employers over extended periods.

[1312] NLRA 1935, 29 USC s 158(a)(1). Prohibited employer conduct includes threats of job loss if employees vote to unionise, promises of benefits in exchange for anti-union votes, surveillance of union meetings, interrogating employees about their union sympathies, and accelerating layoffs to reduce the bargaining unit. See NLRB v Exchange Parts Co 375 US 405 (1964) on the prohibition of pre-election benefits.

[1313] National Labor Relations Act 1935, 29 USC ss 151–169. The Act established the National Labor Relations Board (NLRB) as the primary federal agency responsible for administering collective bargaining law. Section 7 guarantees workers the right to self-organisation, and s 8(a) prohibits employers from engaging in unfair labour practices that interfere with these rights.

7.2 Globalised Production and Outsourcing

A contemporary video game is typically a global product, created through complex supply chains spanning multiple continents. A studio based in Montreal may design the core game mechanics, outsource animation to a firm in Shanghai, contract quality assurance testing to a company in Romania, use voice actors recorded in Los Angeles and London, and rely on a publisher in the United States for marketing and distribution. This globalised production network creates a "race to the bottom" in labour standards, as work flows to jurisdictions with lower wages, weaker protections, and less effective enforcement.[1314]

Regulating this diffuse and borderless industry is exceptionally difficult for any single national labour authority. It raises complex questions of which country's law applies to which aspects of production, how enforcement can be coordinated across multiple jurisdictions, and how workers in one country can protect themselves against competition from workers in countries with lower standards. International labour standards, such as those developed by the International Labour Organization, provide a framework for cooperation but lack effective enforcement mechanisms. Trade agreements increasingly include labour provisions, but these are typically weak and difficult to enforce.[1315]

7.3 Cultural Factors in the Industry

Perhaps the most insidious and difficult-to-regulate challenge is the cultural factor of "passion exploitation." The video game industry actively recruits individuals who are deeply, personally passionate about games. This passion is then mobilised and exploited to extract more work for less pay than would be acceptable in other industries.

Workers accept low wages, long hours, and chronic job insecurity because they see it as a privilege to work on something they love, because they have internalised the idea that suffering for one's art is noble and necessary, and because they fear that refusing to sacrifice will mark them as insufficiently committed. This internalisation of exploitation makes it extraordinarily difficult to organise for better conditions, as workers may feel they are betraying their passion, letting down their team, or abandoning their dreams. The passion that draws people to the industry becomes a tool for their own exploitation.

The law is ill-equipped to deal with this cultural dynamic. It can mandate a minimum wage and a maximum working time, but it cannot easily combat a culture in which employees are made to feel that working eighty-hour weeks is a sign of dedication and that complaining about conditions reveals a lack of passion. It can prohibit discrimination and harassment, but it cannot easily address the subtle ways in which cultural norms silence dissent and enforce conformity. Addressing these issues requires not only legal reform but also cultural change, and the relationship between law and culture is complex and indirect.

8. Legal and Policy Reforms

Addressing the deep-seated issues identified in this paper requires a comprehensive and multi-pronged approach to legal and policy reform. The following recommendations are offered as starting points for discussion and action.

8.1 Strengthening Overtime Enforcement

Policymakers should consider narrowing the scope of overtime exemptions for creative and technical professionals in the digital economy. While the "learned professional" exemption serves legitimate purposes, its application to rank-and-file workers who exercise limited autonomy and work under close supervision should be re-evaluated. Legislative or

[1314] Richard Locke, The Promise and Limits of Private Power: Promoting Labor Standards in a Global Economy (CUP 2013) 25–49. Locke's analysis of global supply chain governance demonstrates that voluntary corporate social responsibility initiatives are insufficient to prevent a race to the bottom in labour standards and that binding regulatory frameworks are required.

[1315] ILO, Non-Standard Employment Around the World: Understanding Challenges, Shaping Prospects (ILO 2016) 35–60. The ILO defines non-standard employment to include temporary work, part-time work, and disguised employment relationships, and estimates that non-standard workers constitute over 40% of the global workforce, with particular concentration in the creative and digital sectors.

regulatory action could clarify that the exemption applies only to workers who genuinely exercise independent judgment and discretion, not to those who simply possess specialised skills.[1316]

Governments should also increase funding for labour inspectorates to proactively investigate industries with known issues like crunch, rather than relying solely on worker complaints. Proactive investigation is essential in contexts where workers fear retaliation and where violations are difficult to detect through reactive enforcement. Inspectors should have authority to review time records, interview workers, and impose substantial penalties for violations, with penalties structured to be more than a minor cost of doing business.[1317]

8.2 Addressing Worker Misclassification

The most effective reform to address misclassification would be the adoption of a simpler, more robust legal test for employment status that shifts the presumption in favour of employee status. California's "ABC test," adopted in various forms in other jurisdictions, provides a useful model. Under this test, a worker is presumed to be an employee unless the hiring entity can prove three things: that the worker is free from control and direction in performing the work; that the worker performs work outside the usual course of the hiring entity's business; and that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.[1318]

This test makes it substantially more difficult to classify workers as independent contractors when they are economically dependent on a single employer and integrated into that employer's business. Its adoption would require many studios to reclassify workers as employees, extending to them the full range of legal protections. Stronger penalties for misclassification and a private right of action for workers to sue for unpaid benefits would further strengthen enforcement and empower workers to assert their rights.

8.3 Promoting Collective Bargaining Rights

The law should actively lower barriers to unionisation and collective bargaining. This could include streamlining the union election process, imposing stricter penalties for employers who engage in anti-union tactics, and ensuring that workers on fixed-term contracts retain the right to participate in organising campaigns even if their contracts expire during the process.

More ambitiously, policymakers should explore sectoral bargaining models that would allow unions to negotiate minimum standards for an entire industry, rather than on a studio-by-studio basis. Sectoral bargaining, common in many European countries, establishes industry-wide standards for wages, hours, and working conditions, taking these matters out of competition between employers and ensuring that all workers in the industry benefit from collective organisation. For the video game industry, sectoral bargaining could address the race-to-the-bottom dynamics that currently drive standards downward and provide a framework for addressing issues that cross employer boundaries.[1319][1320]

[1316] Alexander Colvin and Michael Lyttle, 'The Growing Use of Mandatory Arbitration' (Economic Policy Institute, 6 September 2017) <https://www.epi.org/publication/the-growing-use-of-mandatory-arbitration/> accessed 14 March 2024, 8–12. The report recommends restoring overtime protections as the primary mechanism for limiting working hours, noting that the FLSA was originally intended to create a financial disincentive to overwork as well as a floor for compensation.

[1317] Weil, David, The Fissured Workplace: Why Work Became So Bad for So Many and What Can Be Do About It (Harvard University Press 2014) 229–255. Weil, a former administrator of the Department of Labor's Wage and Hour Division, argues that proactive investigations in sectors with known misclassification problems are far more effective than reactive enforcement, producing higher violation detection rates and larger back wage recoveries per investigator hour.

[1318] Dynamex Operations West Inc v Superior Court (n 22). The ABC test was subsequently codified in California Assembly Bill 5 (AB5), Cal Labor Code s 2750.3, which extended the Dynamex decision to all California Labour Code provisions. The legislation prompted significant controversy in the gig economy sector and was modified by Proposition 22 (2020) to exclude certain app-based platforms, illustrating the political difficulty of addressing misclassification through legislation.

[1319] OECD (n 54) 155–180. The OECD's analysis of collective bargaining reforms across member states identifies streamlined union election procedures, card-check certification, and first contract arbitration as the most effective measures for facilitating unionisation in sectors with historically low

8.4 Industry-Specific Regulatory Guidelines

Given the unique characteristics of the video game industry, governments should work with industry bodies, unions, and worker advocacy groups to develop sector-specific best practice guidelines or codes of conduct. These guidelines could provide clarity on acceptable working hours during crunch periods, outline standards for the use of fixed-term contracts, establish minimum notice periods for layoffs, and mandate anonymous and independent reporting mechanisms for harassment and discrimination.

While not legally binding in themselves, such guidelines could serve multiple functions. They could be used as a benchmark for public procurement, with governments agreeing to purchase from or provide subsidies only to studios that adhere to the code. They could be incorporated into contracts between publishers and developers, creating contractual obligations to maintain specified standards. They could be cited in legal proceedings as evidence of industry standards against which particular practices should be judged. And they could provide a framework for public education and advocacy, helping workers and the public to understand what reasonable treatment should look like.

9. Conclusion

This paper has examined the growing divide between the commercial success of the video game industry and the legal protections afforded to its workforce. The central finding is that while existing labour laws provide a theoretical framework for protection, they are fundamentally ill-suited to the industry's project-based, globalised, and culturally distinct structure. The result is a workforce that is systematically exploited, subjected to excessive hours, chronic insecurity, and pervasive discrimination, with limited access to legal remedies or collective voice.

Key issues such as crunch culture, precarious employment, and worker misclassification persist not primarily because of bad actors acting outside the law, but because the law has failed to adapt to changing economic realities. The exemptions in overtime laws create a safe harbour for uncompensated labour. The reliance on fixed-term contracts allows companies to externalise business risk onto individual workers. The complexities of global production and the cultural exploitation of passion create barriers to regulation that law alone struggles to overcome. The case studies of Rockstar, CD Projekt Red, and Activision Blizzard are not isolated incidents but symptoms of these systemic failures.

The broader implications for labour regulation in the digital and creative economy are significant and concerning. The video game industry is a bellwether for other sectors, including film and television production, digital media, software development, and the broader "gig economy," where project-based work and precarious employment are becoming the norm. The challenges identified here—the inadequacy of overtime exemptions, the exploitation of temporary contracts, the difficulties of regulating global production chains, the mobilisation of worker passion against worker interests—will only become more common as the economy continues to evolve. The lessons learned from the games industry may inform regulatory responses across the digital economy.

The path forward requires a deliberate and comprehensive shift from reactive enforcement to proactive regulation, from fragmented national approaches to coordinated international action, and from exclusive reliance on individual rights to support for collective organisation. Strengthening overtime rules,

union density. See also Kate Andrias, 'The New Labor Law' (2016) 126 Yale Law Journal 2.

[1320] Wilma Liebman, 'Decline and Disenchantment: Reflections on the Aging of the National Labor Relations Act' (2007) 28 Berkeley Journal of Employment and Labor Law 569, 590–595. See also Catharine MacKinnon, 'Beyond Moralism: Directions in Sexual Harassment Law' (1993) 46 Arkansas Law Review 369; OECD, Negotiating Our Way Up: Collective Bargaining in a Changing World of Work (OECD 2019) 78–95, documenting the effectiveness of sectoral bargaining in Austria, Denmark, and Sweden in maintaining high wage floors and reducing precarity.

clarifying worker classification, promoting collective bargaining, and developing industry-specific guidelines are not merely recommendations for the games industry but essential steps toward ensuring that the digital economy of the future is built on a foundation of fair and sustainable work.

The passion of the people who build these virtual worlds, who pour their creativity, intelligence, and emotional energy into creating experiences that bring joy to millions, deserves no less than a real-world legal framework that protects them. The industry that has revolutionised entertainment must now revolutionise its treatment of the workers who make its success possible. Labour law, updated and effectively enforced, has a crucial role to play in making that revolution a reality.