

GIG ECONOMY UPDATES

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In 2018, there were many prominent court rulings surrounding employment status in the Gig Economy. Many of these high-profile cases, featuring Uber, Addison Lee and Pimlico Plumbers confirmed that the people working in the gig economy were wrongly classed as self-employed contactors not workers. Towards the end of the year, judgements for Addison Lee, Deliveroo and Uber were given, and it is expected some of these judgements will have serious implications for the Gig Economy.

ADDISON LEE

In 2018, Addison Lee lost both of their appeals regarding employment status for their private hire drivers and couriers. The first appeal they lost involved their couriers. In May, the Employment Appeal Tribunal (EAT) in London upheld a previous ruling by the Employment Tribunal (ET) that an Addison Lee courier, Mr Gascoigne was a worker therefore entitled to holiday pay.

The second appeal that Addison Lee lost in 2018 involved their private hire drivers. In this case, three drivers who worked for Addison Lee brought a case to the ET in 2017. On November 14th 2018, the EAT in London upheld this previous ruling that the Addison Lee private hire drivers were workers not self-employed and entitled to receive minimum wage and holiday pay. The EAT confirmed that while the contract between the drivers and Addison Lee stated the driver was an independent contractor and that there was no obligation to provide or do any work, the drivers were required to log on and accept the jobs they were sent in order to make up the hours. It is thought that this new ruling could affect thousands of Addison Lee drivers.

DELIVEROO

Last month, Deliveroo riders lost their appeal to gain collective bargaining. Earlier in the year, the High court gave the Independent Workers of Great Britain (IWGB) permission to perform a full judicial review of a previous decision made by the Central Arbitration Committee (CAC) in November 2017. The IWGB was seeking to represent the Deliveroo riders for union recognition and stated this affected the human rights of Deliveroo riders. The High Court dismissed the judicial review challenge and confirmed that the Deliveroo riders were not entitled to collective bargaining. The IWGB has already said it plans to appeal the ruling.

UBER

Towards the end of 2018, the long-running case concerning the employment status of Uber drivers was heard by the Court of Appeal, the second-highest court in London. Uber, the ride-hailing app, was attempting to overturn the 2016 Employment Tribunal (ET) ruling. Over the two-day ruling in October, Uber argued that both tribunals misunderstood how Uber operates. Uber stated that there is no contract between the drivers and Uber, and the drivers could not by definition be considered a worker under the Employment Rights Act (ERA). On 20th December, The Court of Appeal ruled that Uber drivers should be considered workers and therefore entitled to minimum wage and holiday pay. The court upheld the previous ET and EAT rulings. In 2016, the ET found that the Uber drivers were workers and not self-employed contractors who were entitled to minimum wage and holiday pay. Uber appealed this decision taking the case to the Employment Appeal Tribunal (EAT) who upheld the previous ET decision in November 2017. It is expected that Uber is likely to appeal to the Supreme Court.

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CALIFORNIA

In October 2018, The California Court of Appeal confirmed during the case, *Garcia v. Border Transportation Group, LLP* that the ABC test, the new legal standard (adopted by the Supreme Court in April) is limited and can only be used for certain claims. The Court of Appeal also stated that the previous standard, the Borello test (which has been used for over thirty years) will still be used for non-wage and hour claims to determine worker status. The court also clarified that “the third-prong of the ABC test can only be satisfied if the worker is actively engaged in an independent business and not if the worker could have engaged in an independent business or was permitted to engage in an independent business.”

WHAT IS UP NEXT?

On December 21st, the UK government published its Good Work Plan which details its vision for the future UK labour market. The paper provides guidelines on how to implement changes regarding employment status and modern employment practices following recommendations from the Taylor Review. Both Uber and Addison Lee are expected to appeal the decision that their drivers are workers, and the IWGB is expected to appeal the judicial review dismissal on behalf of the Deliveroo riders by the High Court. In 2019, we should hear another employment case from the Gig Economy when an employment tribunal claim by the former UK Cycling team member Jess Varnish will begin.





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