The Gig Economy – Latest Updates

Over the last few years employment law topics such as worker status and holiday pay have been in the headlines for those working in today's Gig Economy. Since 2016, several high profile cases, featuring the likes of Uber, Deliveroo and CitySprint, regarding employment status have taken place, and towards the end of 2017 there were a number of decisions made on worker classification that could have a big impact on the future.

Uber

In 2016, two drivers brought a case in London against the “ride-sharing” platform Uber over employment rights. Uber had argued that the workers were self-employed and not entitled to employee’s protections. In a landmark case the Employment Tribunal (ET) ruled that the Uber drivers were employees and not contractors and as such were entitled to workers’ rights and protections.

After appealing to the Employment Appeal Tribunal (EAT) Uber lost their appeal in November 2017. The EAT upheld the ruling by the ET that Uber drivers are workers for the purposes of the Employment Rights Act 1996 (ERA). To determine this ruling, EAT looked at the worker status and the reality of the arrangement between Uber and the drivers. After considering several factors the EAT upheld the decision made by the ET.
The EAT found that the Uber drivers are classified as employees as they have an obligation to personally perform their services. This begins when the drivers are signed in to the uber app, are in the territory within which they are authorised to work and are ready to accept assignments. The EAT agreed with the ET that Uber drivers are workers and are entitled to the right to the national minimum wage and holiday pay.

Deliveroo

While most claims to determine worker status have been brought through to the employment tribunals, in May 2017 the Independent Workers Union of Great Britain (IWGB) began the Central Arbitration Committee (CAC) case on behalf of Deliveroo riders to gain union recognition. In November, after determining worker status the CAC concluded that Deliveroo riders are not employees.
The CAC rejected the IWGB’s application for union recognition. After examining several factors CAC found that there was a genuine substitution clause that reflected the reality of the contractual relationship for the Deliveroo riders. The CAC determined that Deliveroo riders did not contractually agree to personally provide work for the company and that they could, and had indeed in some cases, use a substitute either before or after accepting a job. CAC concluded that Deliveroo riders are self-employed as opposed to employed and therefore are not entitled to employees’ rights.

The European Court of Justice

In addition to these cases the European Court of Justice (ECJ) made a landmark decision on the workers’ holiday pay entitlements. In November, the ECJ handed down a decision that self-employed contractors who were misclassified could claim compensation for all unpaid holidays. The case involved a window cleaner who was awarded £27,000 compensation for the unpaid holidays he would have received has he been correctly classified as an employee. Before the ECJ’s ruling there was a limit on liability of one or two years but with the limit removed claims can go as far back as 1990s when the European Union’s Working Time Directive was introduced.

Coming up Next

More cases regarding employment status will be heard in 2018. Coming up in February is the Pimlico Plumbers supreme court appeal. Following the EAT’s decision, in late November Uber has petitioned an appeal which will go through to the Court of Appeals and Deliveroo still face an employment tribunal case from a group of riders. With the two companies taking very different approaches, Uber responding with hard hitting tactics and Deliveroo using a softer approach it will be interesting to see how it plays out for the two companies next year and how it will affect the future of the Gig Economy.