Legal Briefing for Advisers – March 2021

Landmark Decision Brings Clarity on Employment Rights for 'Gig Economy'

Introduction

The recent Supreme Court ruling provides welcome clarity on the law relating to the 'gig economy'.

The Supreme Court ruled in favour of Uber drivers in the case *Uber BV and others v Aslam and others* in a judgment which is likely to have a great impact on the growing 'gig economy' and will affect many industries that have been relied on, and flourished, during the Covid-19 pandemic. The outcome of the judgment is that this sector may no longer simply label their 'contractors' as 'self-employed' and ignore the rights and obligations guaranteed under employment law.

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What is the 'gig economy'?

The 'gig economy' refers to a growing area of work in which people receive a payment per assignment or 'gig' undertaken, rather than being paid by the hour, day or receiving a salary as people do in more traditional roles. It includes industries such as takeaway food delivery, parcel delivery and, as in this case, app-based taxi services.

What is the case about?

On 19th February 2021, the Supreme Court handed down its judgment in the much-anticipated case against the taxi app Uber. The unanimous judgment confirmed the position taken in the original Tribunal decision of October 2016 which said that Uber drivers are 'workers' and not 'self-employed contractors' as Uber had maintained. The Appeal also confirmed that 'working time' for the drivers included time waiting for jobs while logged into the Uber app.

Why does it matter that they're 'workers' and not 'self-employed independent contractors'?

Self-employed contractors can make their own decisions about what work they do and where and when they do it. Most importantly they have no rights in employment law.

Workers are individuals who have entered into or work under a contract of employment and are protected by employment law. They are protected by the Working Time Regulations and are therefore entitled to, for example, holiday pay and rest breaks. There are also entitled to sick pay (provided they meet other qualifying criteria) and the national minimum wage.

Why did the Court decide that they are workers?

The judgment concentrated on the degree of control that Uber exercises over the drivers. Five reasons were given for the decision:

1. Where a ride is booked through the Uber app, it is Uber that sets the fare and drivers are not permitted to charge more than the fare calculated by the app. It is therefore Uber which dictates how much drivers are paid for the work they do.
2. Drivers have no say in the terms of the contract between themselves and Uber. The terms are dictated by Uber.

3. Once a driver logs into the app, Uber monitors their acceptance and cancellation rate. A penalty of being logged out of the app for 10 minutes is imposed if too many trips are rejected or cancelled. This effectively prevents the driver from working until they can log back on.
4. Uber exercises significant control over how the drivers deliver the service. They do this using the ratings system – fall below the required standard, and the driver's contract with Uber is terminated.
5. Uber restricts the ability of drivers to communicate with passengers outside the app to ensure that no relationship can build up between a driver and passenger outside the one trip booked through the app.

These, and other factors, will now be considered by tribunals in determining the thorny question of employment status and are likely to have a ripple effect throughout the 'gig economy'.

Why does 'working time' matter?

The Uber drivers were only paid for the 'gig' meaning that they were only paid from the time they picked the fare up, to drop-off. A large part of their time was spent waiting for fares to arrive on the app and this time was unpaid.

What decision was made on working time?

The Supreme Court agreed with the Tribunal that time spent by drivers working for Uber was not limited (as Uber argued) to periods when they were driving passengers to their destinations; but included any period when the driver was logged into the Uber app and was ready and willing to accept trips.

This leaves it open for the claimants, and indeed other Uber drivers and gig economy workers, to make back-dated claims for unpaid wages, unpaid holidays and, potentially sick pay (if they met the qualifying criteria), as well as a claim for the national minimum wage.

What impact will this case have?

This decision leaves it open for all people working in the 'gig economy' to challenge their employment status. Just because they have been defined by their company as 'self-employed contractors' does not mean this is necessarily correct under the law. Furthermore, workers can now argue that time spent waiting between 'gigs' should be paid.

Where can I go for advice on employment status?

Determining employment status can be complex. If you have a query about status, or any other aspect of employment law, you can contact Law Centre NI's employment legal advisors through our advice line. Please call **028 9024 4401** for **free, confidential legal advice,** or send an email to **employment@lawcentreni.org**.

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