

“Bicycle Courier Is Worker” In ‘Uber’ Style Case

In the know

In a ‘gig economy’ case very similar to that of the Uber taxi driver case from late 2016, a bicycle courier has been held to be a worker and not self-employed, as her employer company had argued. Here, we take a look at what is likely to be a common story in 2017.

Facts of the Case

- Ms Dewhurst was a courier for the Respondent company, CitySprint, in its medical fleet meaning that she transported parcels to hospitals;
- The contract between Dewhurst and CitySprint was described as a “Confirmation of Tender to Supply Courier Services” and explicitly classed Contractors as ‘self-employed’;
- At Employment Tribunal (ET), Dewhurst made a claim for unpaid holiday pay;
- In order for the claim to progress, she first had to convince the ET that she was a worker and so entitled to rights under the Working Time Regulations 1998.

Employment Tribunal Decision

- Examining the reality of the working relationship, the tribunal found that the documentation was “contorted”;
- The ET found that Dewhurst was not in business on her own account (this is a requisite factor in a finding of self-employment for these purposes);
- This was because Dewhurst was dependent on CitySprint both economically and organisationally; any person operating a business would not be in this position;
- Other factors relevant to the finding were:
 - a. The lack of discretion in how the services were to be performed by the courier;
 - b. The inability to actually carry out work for others whilst undertaking jobs for CitySprint;
 - c. Cycle couriers could not, in reality, delegate their work to someone else; the opportunity to

do so was so small because of the substitution requirements outlined in the documents;

- d. CitySprint controlled how the couriers worked by directing them during their time on circuit, instructing them to “smile” and wear a uniform, paying them according to the company formula and issuing instructions on handling undeliverable parcels.
- Despite her contractual documentation then, the ET found that Dewhurst was a worker and therefore entitled to rights under the Working Time Regulations 1998.

The content of this briefing is correct at the time of publishing

Croner Tips

- **Workers are also entitled to National Living/Minimum Wage; minimum rest breaks; maximum working week etc;**
- **This case is likely to be appealed by CitySprint and so employers in similar situations are not required to make any changes yet but need to aware that this is a developing area of law;**
- **Making sure contractual documentation and every day practices are consistent with each other is vital in cases of employment status.**

Please contact the Business Support Helpline for advice on your specific situation before acting on the information in this article.