

# EAT confirms Uber drivers are workers

## In the know

**The Employment Appeal Tribunal has rejected Uber's attempt to overturn an earlier decision that two of their drivers were workers with employment rights. Uber continues to assert that their drivers are self-employed and confirmed it will continue to do so. Here, we take a look at the latest development and what it means.**

### Uber loses appeal

- In November 2016, the employment tribunal (ET) held drivers engaged by taxi firm Uber were not self-employed contractors (as Uber held them out to be) but fell within the legal definition of 'worker'. The ET decided the relationship outlined in Uber's contractual documentation did not reflect the true nature of the parties' relationship, describing this as "pure fiction";
- Uber appealed, however, were again unsuccessful in convincing the ET of the drivers' status. The Employment Appeal Tribunal confirmed the original decision and held that the drivers are not self-employed.

### Contract v reality

- The EAT found the ET was entitled to look beyond the contractual relationships. The contract stated that the drivers were engaged on a self-employed basis. However, the EAT confirmed the position that the ET should assess the factual reality of the situation, and if that does not match the contractual intention, then the reality will dictate the status. By doing this, the ET correctly deduced the drivers personally undertook work for Uber as part of their business;
- The dismissal of the appeal reaffirms the finding that Uber drivers are workers and, as a result, are legally entitled to receive worker rights;
- For the 40,000 Uber drivers in the UK, this decision entitles them to be paid national minimum/living wage for each hour they are logged in to the app, so long as they are within their territory and are available to take passenger trips;

- They will also be entitled to future, and previous, holiday pay and other rights such as pension contributions, whistleblowing protection and minimum rest periods.

### Future steps

- Uber UK's acting general manager has already announced that Uber intends to appeal the decision;
- For other employers who operate on a similar basis to Uber, the intention to appeal again creates a limbo situation;
- The EAT judgment provides a binding precedent on other similar ET cases (the determination of new similar claims would have to follow the Uber EAT decision);
- However, it is possible the Court of Appeal will overturn the decision meaning that employers may continue to hold their "gig economy" workforce as self-employed.

### Croner Tips

**The reality of the working relationship will overrule a contractual label. When formulating a contract, think carefully about what status you want to achieve and ensure both the contract and your future actions are consistent.**

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

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