

The Uber Decision Continues To Pave The Way

In the know

Yet another Employment Tribunal has found that so-called “self-employed contractors” are in fact workers and therefore entitled to employment rights. The ruling found three that Addison Lee drivers in a similar judgment to that involving Uber taxi drivers last year. Here, we take a look at the similarities.

Addison Lee fights ‘Uber’ style case

- The three claimants, Lange, Morahan and Olszewski, are minicab drivers for Addison Lee. Their contracts stated they were “independent contractors”, however, the drivers maintained that the reality of the working relationship meant that this classification was misguided;
- The main elements of their argument was that they:
 - went through a rigorous recruitment programme;
 - drove cars with Addison Lee branding;
 - were subject to dress codes;
 - were subject to rules on what they could talk about with passengers;
 - could not tout for business by other means;
 - there was no clause in their contract allowing them to substitute themselves;
- Addison Lee maintained that the contracts were not a sham and the “independent contractor” label was correct;
- They maintained that there was no need for a substitution clause allowing the drivers to send someone else to drive in their place (a key element to being self-employed) because there was no obligation to work in the first place.

Employment Tribunal Decision

- As with the Uber case, the Employment Tribunal decided that Addison Lee held sufficient control over the drivers which meant they were not in business on their own account. They were ‘workers’ with employment rights;
- Addison Lee had not produced enough evidence to show the ET that the reality of the taxi operation indicated self-employment.

Comparisons with the Uber case

- Although the finer detail is different, the overriding principle of ‘control’ was the deciding factor in both the Uber and Addison Lee cases;
- The Uber case was heard by the Employment Appeal Tribunal recently and, because of the similarities between the many gig economy cases which were brought after the Uber case, the decision will have far reaching effects;
- If the decision is overturned meaning that the drivers are in fact self-employed, this may signify an end to the seemingly continual conveyor belt of gig economy cases that have kept the tribunals busy over the last year;
- If Uber are unsuccessful in their appeal, employers may have to review their current operations, including both their contracts and day to day operating methods, to ensure compliance with the law.

Croner Tips

Contractual wording and day to day operating methods should be consistent in order for a contract not to be seen as a ‘sham’. If the contract gives someone a particular status label and an analysis of the day to day operation indicates a different status, the label in the contract will not stand.

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

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