

In the Know....

# Uber Drivers are Workers



The first employment status test of people involved in the 'gig economy' recently took place; with taxi firm Uber drivers found to be entitled to basic employment rights. This case could have repercussions throughout all industries who engage people on a "self-employed" basis but who are not in business on their own account.

## What is Uber?

Uber offers a new way of hailing and taxi. Passengers register by providing certain personal information including debit/credit card details. They use the Uber service by downloading an app on to their phone and logging on, then request a taxi through the app. Once the request has been received, Uber locates from the pool of available drivers the one estimated by their equipment to be closest to the passenger and informs him via his smartphone of the request. The fare is estimated before the trip, and a final sum is taken from the passenger's debit card. No cash changes hands.

## What was the claim brought by the drivers?

Uber engages its drivers on a self-employed basis which is reflected in its "Rider Terms". It holds itself as a seller of a platform that matches up drivers with passengers; not a transportation business. However, a group of drivers contended that they were in fact employees; if this was the case then they would be entitled to a whole raft of employment rights. In order for Uber to avoid the drivers being entitled to employment rights, they needed to show that the drivers were in business on their own account.

## What did the Employment Tribunal decide?

The ET decided that the drivers were not in business on their own account, and so fell into the category of 'worker'. They came to this conclusion because, amongst other things, Uber:

- interviews and recruits drivers, using an "onboarding" process;
- fixes the fare and the driver cannot agree a higher sum;
- imposes numerous conditions on drivers e.g. there is a list of makes and models of cars which Uber will accept; cars cannot be older than 2006; they should

preferably be silver or black;

- subjects drivers to a rating system which amounts to a performance management/disciplinary procedure;
- accepts the risk of loss which, if the drivers were genuinely on business on their own account, would fall upon them;
- determines issues about rebates sometimes without involving the driver whose pay is likely to be affected;
- would have to be the client/customer of the drivers. This was clearly not the case.

## The potential implications

This judgment is likely to spread wider than just taxi firms. It may mean that all employers who engage people on self-employed contracts will need to review their position to identify whether the individual may be a worker unless there is a strong indication that the individual is in business on their own account. In order to ascertain this, employers will need to look at, amongst other things:

- Does the individual market themselves to the world or were they simply engaged to work within an organisation?
- What are the invoicing arrangements?
- Who takes the financial risk in the set up?
- Are there any methods of performance management or discipline?

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