

What are the implications of the Uber "workers" ruling?

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The Supreme Court has now handed down its decision in the longstanding battle between Uber and a number of its drivers who contended that they were "workers" for employment law purposes. UK employment law is, so far as employment status is concerned, more complex than in many countries. We recognise three types of individual – the employee, the worker and the self-employed. Trying to explain the difference to people not familiar with UK employment law can be difficult, particularly so far as the "worker" category is concerned. They are not employees, because of the lack of mutuality of obligation between them and the person engaging them, but they are also not sufficiently autonomous to be classed as a truly independent contractor.

In this case, Uber said that their drivers were self-employed taxi drivers. The drivers disagreed and said that they were "workers". The significance of the decision is that the taxi drivers were right, and Uber must now account for the minimum wage and paid annual leave, amongst other things, which the self-employed are not entitled to. Clearly, with an organisation of the scale of Uber, this could amount to a significant sum. At all stages of appeal, the drivers won their argument principally because of the control that Uber had over them because the drivers had to have their app switched on when working, they had to work in a designated territory, and they had to be willing and able to accept jobs. This, they said, tipped the balance into the worker category.

So, what did the Supreme Court make of this? It said that looking at the way the relationship between Uber, its passengers and the drivers worked, Uber contracted with the passengers and then engaged the drivers to undertake the trips. Significantly, the issue of control that Uber has over its drivers heavily influenced the Supreme Court's decision. Uber sets the fare and drivers are not at liberty to change it. Uber also monitors its drivers' rates of acceptance of jobs and, if it falls below a certain threshold, then the driver is logged off the Uber app for a certain period of time, meaning that they are unable to undertake any further work during that period. Passengers also have the ability to "rate" their drivers and, if a driver's rating falls below a certain level, then they face a series of warnings which can ultimately result in their contract with Uber being terminated. Finally, Uber controls, to a large extent, the communication between the drivers and the passengers which means that drivers cannot form any form of working relationship with their passengers beyond the ride in question.

Taking all of these factors into account, the Supreme Court decided that Uber exerted such control of their drivers that they could not realistically be classed as truly independent contractors. They are "workers" and entitled to the legal entitlements that workers enjoy. Clearly, this decision is significant. There are around 5 million people working in the so called "gig economy". Many like the freedom and flexibility it provides, but at the same time there has been a lot of commentary about the lack of protection for the more vulnerable members of the working population. This decision now paves the way for many working in the gig economy to claim paid time off for holiday, the minimum wage, a maximum 48 hour week, and sick pay. Many of these costs will not be factored into businesses' budgets and, at a time when many businesses are under pressure, they will need to urgently revisit the status of their workforce in light of this decision.

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