Anarchy In The UK: What Does Today's Milestone Misclassification Ruling Mean For American Gig Economy Companies?

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While misclassification battles over the status of gig economy workers rage here in the United States, we are by no means the only country grappling with these thorny 21st-century legal issues. Just today, in fact, an appeals tribunal in the United Kingdom ruled against Uber by agreeing two drivers who brought a claim against the ride-sharing giant should be classified as employees and not independent contractors, therefore entitling them to minimum wage payment and statutory holiday pay. This watershed decision could spell serious trouble not only for Uber but for many other gig companies operating in the UK. The question that American businesses need to be asking now is: "will this decision impact us in any way?"

Before we delve into that topic, let's take a quick look into what happened in the UK case. In 2016, two Uber drivers – James Farrar and Yaseen Aslam – brought a legal challenge against the company with the help of the GMB trade union on behalf of themselves and a group of 19 drivers. They claimed they were misclassified as contractors and therefore should have been entitled to holiday pay and the UK's National Minimum Wage. In September 2016, an Employment Tribunal agreed with the drivers and ruled in their favor; we briefly wrote about this decision earlier this year. Uber appealed the case to the Employment Appeal Tribunal (EAT), which heard arguments in late September and handed down a 53-page ruling today.

The ruling said that genuine independent contractor relationships include "no obligation for work to be offered and no obligation for any offer of work to be accepted." According to the EAT, that was not the case with Uber's operations in the UK. In fact, Judge Jennifer Eady ruled that Uber drivers in the UK were told that they needed to accept at least 80% of the trip requests they received in order to retain their account status on the ride-sharing platform. "Even if the evidence allowed that drivers were not obliged to accept all trips, the very high percentage of acceptances required" justified a ruling in the drivers' favor. She concluded that the lower court ruling was "neither inconsistent nor perverse" with regard to current UK law and upheld the decision in the drivers' favor.

Uber quickly issued a statement disagreeing with the decision, making several key points:

- There is little difference between ride-sharing drivers and those drivers for taxi and private-hire services, who have been considered self-employed individuals for decades, "long before our app existed."

- With regard to the assertion that drivers are required to take 80% of trips sent to them while logged into the app, "this has never been the case in the UK."
- The company has made several changes over the last year to provide drivers even more control, and has invested in benefits for its drivers (such as "illness and injury cover") to make their experience even better.

Uber has also vowed to appeal the ruling. There are two further appellate steps for them to salvage a victory in this case: at the UK's Court of Appeal, and then finally at the Supreme Court. But there is certainly no assurance they will find success at either stop, especially since gig economy companies have been consistently running into roadblocks in the UK. According to London's Sean Nesbitt from the firm Taylor Wessing, as reported by TechCrunch, workers have won "eight out of eight challenges" in these cases in recent months, including at judicial levels higher than the EAT.

If there is a glimmer of hope for Uber and the UK gig economy companies as a whole, it's that today's ruling only applies to the individuals who brought the claim. Uber will no doubt strenuously contend that the ruling does not establish a national precedent but should be limited to the unique facts and circumstances surrounding Messrs. Farrar and Aslam. But as Bloomberg reported, a Leeds employment lawyer, Glenn Hayes, believes such a line of defense is "nonsense." He believes the decision will have a "huge impact" on other gig economy models. If, in fact, Uber is forced to transform the employment status of all 50,000 drivers in the UK, the company has previously said it could cost them "tens of millions" of pounds.

This ruling could further accelerate the need for legal reform in the gig economy field, which is the process of review at present in the UK. Last year, the UK government commissioned an independent review of working practices, which resulted in the recommendation for an entirely new classification for workers on tech platforms (the mythical "third category," a hybrid of employee and contractor). As the New York Times reported, Susannah Kintish, a partner at the London law firm Mishcon de Reya, noted that the main piece of legislation that regulates how workers are treated as passed in 1996, "when the Spice Girls had their first hit. It's just way out of date." However, there is no indication as of yet whether the recommendation will be accepted, so companies in the UK will have to wait to see whether such a change comes to fruition.

So what does this mean for American gig companies? Obviously, today's decision has no direct precedential value. The UK workplace laws read quite differently from American laws, and despite the fact that the misclassification analysis is similar (boiling down to "control" as the key aspect), it is highly doubtful that any American judge will even cite to this decision in passing while rendering a ruling on any aspect of the gig economy. So there is certainly no need to panic.

One could argue, in fact, that this decision might help American gig economy companies. The ruling is consequential enough that it will certainly be part of any conversation that legislators and regulators have on this side of the pond when it comes to the need to adopt new standards to meet the 21st-century challenges brought about by gig economy business models. It may spur action in

terms of legislation by Congress or by the states, and could encourage federal agencies to take the next step to introduce certainty in an area clouded by confusion. Rather than face our own version of anarchy in the USA, it would be of great benefit to gig economy companies if we were to find a consistent approach to regulating the classification conundrum rather than watching participants battle it out in the courts.

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