UK: Uber Loses Appeal Over Characterization Of Drivers As "Workers"

Insights
11.22.17

Uber drivers in the UK are "workers" entitled to earn at least the national minimum wage and enjoy other statutory benefits and protections an Employment Appeals Tribunal ("EAT") held on November 9, upholding the decision of the Employment Tribunal ("ET") in the case of Uber B.V. & Ors v. Islam & Ors UKEAT/0056/17/DA. The ramifications of this decision are huge: Uber's costs will increase significantly to cover drivers' pay and benefits and Uber will have to revise its contracts, and the tens of thousands of Uber drivers will enjoy workers' rights and protections previously unavailable to them. This decision sends a cautionary message to any enterprise with a similar business model to Uber with self-employed workforces. These businesses would be well advised to re-examine their relationship with all persons classified as independent self-employed contractors.

Claimants Aslam and Farrar and 19 other Uber drivers in the London area, filed claims with the employment tribunals that they should be classified as workers for the purposes of the Employment Rights Act 1996, Working Time Regulations 1998, and the National Minimum Wage Act 1998. Uber classified is drivers as self-employed providers of transportation services to riders, where the company is an agent of the drivers.

It is important to know some of the factors courts and tribunals consider to determine whether an individual is a self-employed person running his or her own business or a worker. A self-employed person or independent contractor has a large element of control over work: they may choose what work they do, when they do it, how they undertake the work, and also who does the work (the work may be sub-contracted). Typically, self-employed persons use their own tools and equipment; they are responsible for paying their own taxes (i.e. taxes are not deducted at source), business costs and expenses; and they are free to work for more than one client, including competitors. Workers, however, have less control: they have to agree to the business's terms and conditions to get work; they have to work even if they don't want to; they cannot subcontract the work; and their employer controls how the work is done.

On the basis that drivers had no obligation to switch on the Uber app, the ET considered the status of drivers when the app was turned on. Indications that the employment relationship is in fact between an employer and worker, included: Uber interviews and recruits drivers, controls key information regarding passengers, and fixes the fare; drivers have an obligation to accept work by being in a certain region with the Uber app on, "able and willing to accept assignments"; performance was

Copyright © 2024 Fisher Phillips LLP. All Rights Reserved.

measured and disciplinary procedures in place for drivers cancelling and refusing trips; the Uber app provides the route to take to the destination; drivers are not permitted to sub-contract the assignments to another individual because access to the Uber app is non-transferable, and are generally not authorized to contact their passengers after the trip. Uber's contention that it provides leads to the drivers was rejected by the ET because at no time is the driver permitted to negotiate with a passenger: "passengers are offered and accept trips strictly on Uber's terms." Similarly, the idea that "Uber in London is a mosaic of 30,000 small businesses linked by a common 'platform'" was rejected.

Note that there were some factors that were more indicative of "self-employed" status, including: Uber drivers supply and maintain their own vehicles (although Uber has a list of acceptable vehicles); drivers are free to work for competitors and other organizations; and drivers treat themselves as self-employed for tax purposes. However, the tribunal was unequivocal in its determination that in reality Uber drivers are part of Uber's "business of providing transportation services."

As "workers", Uber drivers will enjoy workers' rights and protections, including: minimum wage pay; statutory minimum paid holiday and rest breaks; protection from unlawful discrimination and for whistleblowing. Clearly, such classification will lead to increased costs for Uber as an "employer," rather than an "agent". Whether or not Uber appeals this ruling, "gig economy" businesses with an independent self-employed workforce with operations in the UK should review their characterization of work relationships.

Copyright © 2024 Fisher Phillips LLP. All Rights Reserved.