



## HR Broadcast – Employee or Worker or Self-employed and that Uber Case

The recent Employment Tribunal (ET) decision in the Uber taxi driver case in many ways just confirmed what many employment lawyers might well have anticipated. The difference between this case and others over the last three or four years is the sheer number of people affected.

In its decision the ET noted that:

*Uber is a modern business phenomenon established as recently as 2009 and by the time of the judgement in October 2016 already had 40,000 drivers in the UK of which 30,000 were in London.*

The Employment Tribunal decided that the drivers, although deemed to be self-employed by Uber and where documentation pointed to that arrangement, were in fact not self-employed but workers and entitled to basic employment rights.

Uber is just one of many organisations which have grown rapidly in what is called the ‘gig’ economy where individuals are paid by the job rather than by the hour or week or month. There are many delivery drivers whose arrangements could well fall into the definition of being a worker.

It is worthwhile reminding readers that trying to identify whether or not an individual is truly an employee or self-employed always depends on a variety of criteria and there is no simple definition. In addition there is a category of ‘worker’ as defined by the Employment Rights Act in (b) below:

*In this Act “worker” ... means an individual who has entered into or works under (or, where the employment has ceased, worked under)—*

*(a) a contract of employment, or*

*(b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;*

This category of worker falls between being an employee and being clearly self-employed. A worker fitting into this category would be entitled to the national minimum wage and paid holidays, and that was the key to this case and the basis on which it was brought.

Such a worker would not be entitled to many employment rights such as statutory sick pay, redundancy or protection against unfair dismissal but would, at least, receive some basic rights. Of course, the consequences are profound and it seems that the decision is very likely to be appealed.

The decision shows how difficult it is for a business to escape its obligations to workers even within the most carefully crafted contractual documentation. The Tribunal will always look at the reality of the true relationship between the parties.

In every dispute as to whether an individual was an employer, worker or self-employed the tribunal will review all of the factors of their relationship.