

MASSERS

EMPLOYMENT LAW UPDATE

October 2016

Uber Judgment – Employment status and the “gig economy”

In July we reported on a test case being brought by two Uber drivers challenging their employment status. Uber argued that its drivers are independent contractors or self employed and not eligible for certain employment rights such as paid holiday and the national minimum wage. The drivers claimed that in practice they are workers and entitled to these and other benefits.

An employment tribunal has ruled that the two drivers are “workers” for the purposes of the Employment Rights Act 1996. This means that, amongst other rights, they will be entitled to paid holiday, a maximum 48 hour working week, the national minimum (and living) wage and protection under the whistleblowing legislation. They are not however “employees” and will not benefit from the full range of employment rights to include protection from unfair dismissal or the right to claim a statutory redundancy payment after two years’ service.

The decision will have far reaching consequences in what is being termed the “gig economy”. Uber is thought to have around 40,000 drivers who may now also claim to be entitled to those benefits enjoyed by workers. Other companies such as Deliveroo and Hermes have also been the subject of legal challenge surrounding employment status and it is possible that other such companies will face claims moving forward. It is of course incredibly likely that today’s decision will be appealed by Uber.

Business models such as that operated by Uber have also faced a lot of scrutiny from the government and HMRC over recent months, with HMRC establishing a specialist team focusing on employment status with a view to ensuring that people aren’t being misclassified as a means of avoiding tax and national insurance contributions.

Asda workers and equal pay

An employment tribunal has ruled that a claim for equal pay being brought by over 9,500 female workers for Asda may proceed, as the women can legitimately compare themselves to higher paid men who work at warehouses.

The ruling was made at a preliminary hearing and it will be some time before the substantive hearing and Judgment to determine whether the women are entitled to receive the same rate of pay as their male comparators. Asda will continue to strongly defend the claim, which it is thought could cost the company in excess of £100m if successful.

Holiday pay to include commission

In *British Gas Trading Ltd v Lock and another* [2016] EWCA Civ 983, the Court of Appeal upheld the Employment Appeal Tribunal’s decision that holiday pay should include results-based commission. This will only apply when calculating pay in respect of the 4 weeks’ statutory holiday pay derived from Article 7 of the Working Time Directive, and not to the additional 1.6 weeks’ holiday workers in England are entitled to under the Working Time Regulations.

The Court of Appeal did not address the question of the appropriate reference period to take into account when calculating the commission to be paid during statutory holiday.

Shared parental pay and sex discrimination

In *Snell v Network Rail*, a tribunal ruled that a policy of paying men and women different rates of pay whilst on shared parental leave amounted to sex discrimination.

A father has been awarded around £30,000.00 after Network Rail refused to pay him the same amount as his wife, who also worked for the company, while on shared parental leave. Mr Snell was told he would only receive statutory parental pay whilst on leave, whereas his wife would receive full pay.

The tribunal heard that Network Rail has since reviewed its policy, and will now pay mothers and their partners statutory, rather than enhanced, parental pay.

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