

MASSERS

EMPLOYMENT LAW UPDATE

December 2018

Uber loses further appeal

The Court of Appeal (CA) has found that Uber drivers are workers rather than independent contractors, and are “at work” for the purposes of the Working Time Regulations at any time that they are logged on to the Uber app and ready and willing to accept a fare.

Uber passengers can book rides via a smartphone app. Drivers also have the app and when logged on, can choose to accept fares. They drive their own cars and can decide when to log on and accept bookings. Their contracts provide that they are independent contractors which, if true, would mean that they were not entitled to holiday pay and national minimum wage amongst other things.

In earlier judgments, both the employment tribunal and Employment Appeal Tribunal (EAT) have ruled that notwithstanding the contractual provisions, the reality of the working arrangements rendered the drivers workers. The CA has upheld these judgments.

The majority of the CA also found that the drivers are working at any time when they are logged on to the app and ready and willing to accept work.

Uber have been given leave to appeal to the Supreme Court so the matter looks set to continue for some time yet.

Disability discrimination

In *Williams v Trustees of Swansea University Pension* the Supreme Court found that the claimant was not treated unfavourably when given an enhanced pension based on part time hours.

C was disabled and took ill health early retirement at the age of 38. He was entitled to a lump sum and annuity payable immediately and with no actuarial reduction for early receipt, as well as an enhancement calculated based on his salary had he worked until 67. C argued that this was unfavourable treatment, as he was working part time because of his disability.

The Supreme Court held that the treatment in question was the immediate payment of a pension. Were it not for his disability, C would not have received his pension at that time. As such, the treatment could in no way be seen as unfavourable.

Workplace reforms announced

On Monday legislation was introduced giving workers the right to request more predictable hours and requiring staff to be given details of their rights from the first day in a job, including eligibility for paid and sick leave.

The government claims the legislation will prevent agency staff being paid less than permanent employees; increase the maximum fine a tribunal can impose from £5,000.00 to £20,000.00 where the employer is found to have demonstrated “malice, spite or gross oversight”; and ensure companies calculate holiday pay based on 52 rather than 12 weeks.

The General Secretary of the TUC has commented that the reforms do not go far enough, providing no protection to zero hours workers and doing nothing to stop companies treating

people like “disposable labour”.

Source: www.bbc.co.uk – *Workplace reforms “will protect gig economy workers”* 17/12/18

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