

## Do employers need to be ‘Uber’ careful when choosing the Self-Employed route?



Employment lawyers have warned recruitment departments to review terms & conditions of working arrangements in contracts to ensure any intention to create a self-employed relationship is reflected in working practices offered to new hires.

The warning follows a high profile case involving Uber, in which a group of its drivers have taken the multinational online transportation network company to tribunal in London last week, arguing they should be recognised as workers rather than self-employed.

Uber drivers are engaged on a self-employed basis and are therefore not entitled to common workplace rights such as holiday pay, sick pay, National Living Wage or pension contributions.

The case centres on the drivers' claim that the terms & conditions of their work with Uber mean that they are not technically self-employed and should be entitled to the range of benefits.

According to Nicola Bell, trainee solicitor at employment law firm Irwin Mitchell, the Uber case is just one of a number of recent cases attempting to deal with the “blurred” lines between self-employed and workers.

“Increasing numbers of individuals are missing out on employment rights as a result of their companies misclassifying their workers as self-employed, which saves the business money,” Bell told *Recruiter*.

And Bell argues a ruling in favour of the drivers could open the floodgates to an array of individuals coming forward claiming they have been wrongly labelled, leading to some “substantial” payments, including compensation for past failures by companies to make appropriate

payments to individuals who should have been treated as workers. “It is therefore important that in-house recruiters start reviewing the terms & conditions of working arrangements to ensure that any intention to create a self-employed relationship is reflected in the working practices offered to individuals joining the company,” she added. Meanwhile John Hayes, principal at Constantine Law, urged in-house recruiters to follow the Uber case for a list of employment status factors being considered by the tribunal.

“In essence, this is likely to come down to how much ‘control’ an Uber driver has over their working hours, and even routes,” he explained. “For example, if there are exclusivity clauses banning Uber drivers from working for other cab companies, then this is an indication of worker status. Other elements of supervision direction and control (eg. regular shifts) are also important. Uber will doubtless argue that the main ‘risk’ in supply is borne by the worker – ie. they supply and maintain their own car and under their own policy of insurance.

“The wider freelance community (eg. Deliveroo cyclists) will also be interested in the outcome of this case. I suspect that HMRC will be keeping an eye on the outcome also,” he added.



But Jim Lister, business services principal lawyer at Slater and Gordon, told *Recruiter* he would be “very surprised” indeed if it is found that Uber drivers are employees.

“There is too little control over the times and places that the drivers work, and no mutual obligation to offer work or to do it if it is offered,” he explains.

“Generally speaking, anyone who has that much control over the way that they work, or whether they work, is not going to be an employee.

“It is becoming increasingly difficult for employers to have their cake and eat it; to receive personal services from individuals, without them being employees or at the very least workers. The government has for some time been cracking down on what it calls ‘false self-employment’, and

that trend looks set to continue.”

One way of removing any confusion around employment status is to move contractors onto the payroll.

*The Telegraph* reported the BBC has moved 85 key presenters onto its payroll.

But Dave Chaplin, chief executive of online contractor advice and information provider Contractor Calculator, warns the BBC’s move will result in significant additional costs for the Corporation in the form of employer’s National Insurance Contributions (NICs) and a higher salary to compensate talent for lower net income.

“That’s assuming that those 85 workers will want to continue working for the BBC under the new regime, which may be very unlikely in the case of many performers, he added.

“Rather than become BBC employees, they might be lured to more lucrative contracts with rival broadcasters, remaining as contractors with the flexibility and improved earnings potential that offers.”

If you are considering becoming a contractor and need friendly advice on how to go about setting yourself up as a Limited Company Contractor (LCC) give us a call here at **Across-the-Board Recruitment Ltd™**, we can help.

This article first appeared in the August edition of Recruiter.