

# Are your staff employees, workers or contractors?

The recent decision of the employment tribunal in the case against Uber concerning the employment status of individuals who drive for Uber has generated a great deal of media interest. 19 Uber drivers engaged as self-employed contractors were found by the employment tribunal to be “workers” for employment law purposes.

In this article we are looking at how this issue may affect your business in practice.

## Why does it matter?

The employment status of individuals affects the rights that they have under employment legislation.

**Worker** rights include:

- a minimum of 5.6 weeks’ paid holiday per year;
- rest breaks in accordance with legislation on working time;
- to be paid at least the National Minimum Wage;
- not to be subjected to unlawful deductions from wages;
- to participate in an auto enrolment pension scheme subject to eligibility;
- protections under discrimination and whistleblowing legislation.

In addition to the above entitlements, **employee rights include:**

- the right not be unfairly dismissed and to receive a statutory redundancy payment in some circumstances;
- the right to maternity, paternity, adoption and shared parental leave and pay;
- the right to receive Statutory Sick Pay.

It is estimated that businesses can save 30% by engaging a self-employed contractor rather than an employee. The risks for businesses of engaging individuals on the wrong terms can be significant.

As the recent case against Uber has demonstrated, even if you have agreed to engage an individual as a self-employed contractor, this can be challenged by the individual in the employment tribunal.

It is not uncommon for “self- employed contractors” to argue that they have employee or worker status when the arrangements terminate. Additionally, HM Revenue & Customs can review the arrangements from a tax perspective.

### **How do you assess employment status?**

This will be fact sensitive. The employment tribunal will consider the “reality of the situation”. The hallmarks of an employment relationship are:

- Personal service for remuneration;
- Obligation on the employer to provide work and on the employee to accept work;
- Control;
- Other factors such financial risk, provision of tools and equipment, opportunity to profit, method of payment and any benefits provided.

As recent cases in this area demonstrate, it is far easier for an individual to fall within the definition of a worker.

### **Recent cases on employment status**

These issues were considered in two recent cases:

***Pimlico Plumbers v Smith***. Pimlico Plumbers (PP) is a plumbing and maintenance company. Mr Smith (S) is a plumber. He was engaged by PP as a self-employed contractor.

S contended that he was an employee or a worker. PP argued that S was a self-employed contractor. The factors considered by the Employment Appeal Tribunal (EAT) in this case included:

- The agreement between PP and S described him as self-employed.
- PP gave its customers the impression that plumbers were employees. S wore a uniform, his van showed a PP logo, customers only contacted plumbers through PP, contracts and estimates were issued to customers in the name of PP and customers made payment to PP.
- PP did not have any obligation to offer work to S and he could reject work offered. In practice S worked 40 hours per week.
- S accounted for his own income tax and was VAT registered. He raised invoices and PP only paid the invoice once cleared funds had been received from the customer.

- S provided his own tools.
- S was personally liable for his work and had financial risk in rectifying any work that was not up to standard or if a customer did not pay for the work.
- S was required to personally carry out his work unless he arranged to transfer work to another contractor of PP.

The EAT found that S was not an employee because he had assumed financial risk, the lack of obligation on either party to offer or accept work and the parties had both believed that Mr Smith was self-employed. Mr Smith was however found to be a worker because he was required to provide services personally.

***Aslam, Farrar and others v Uber BV.*** Uber's drivers are engaged as self-employed contractors. Uber's case was that it is a technology platform which puts drivers in touch with passengers and that it is in no way a provider of taxi services. The tribunals concluded that Uber is in the business of providing taxi services and engaged the drivers as workers to deliver its business. In reaching its decision, factors considered by the tribunal included:

- Passengers book trips through the app.
- Once a driver accepts the booking, Uber places the driver and passenger in direct contact, but only through the app.
- The app provides detailed directions to the destination. The driver is expected to follow those directions.
- Uber calculates a recommended fare. The driver cannot agree a higher fare.
- The passenger pays the fare direct to Uber.
- Uber pays drivers weekly in respect of the fares they have earned minus a "service fee" for the use of the app.
- Uber takes the risk in some matters, for example, instances of fraud by passengers and deals with any fare complaints.

## **Practical Considerations**

Businesses should ensure that they engage individuals on the correct basis and have appropriate contractual terms in place. Although the employment tribunal will look beyond the documentation, it will help to persuade an employment tribunal in relation to the parties' intentions.

## How can Taylor Walton Help

If you have any concerns about the employment status of your workforce Taylor Walton can carry out an assessment and assist you with strategies to mitigate risks. Taylor Walton also works with its clients in relation to a wide range of employment documentation to ensure that appropriate contracts are in place for the entire workforce. Visit our [employment page](#) for more information.

---

Effective Solutions for Businesses

TAYLOR  
WALTON  
SOLICITORS