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<http://www.solicitorsjournal.com/comment/uber-self-employed-and-worker-status>



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## Uber: Self-employed and worker status

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**The decision on the employment status and subsequent rights available to Uber drivers could have far-reaching implications for UK businesses, explain **Orla Bingham** and **Chris Weaver****

On 20 July 2016, two test cases got underway in the employment tribunal in one of the most highly anticipated employment disputes of the year. Taxi app organisation Uber is facing a legal challenge from drivers who argue that their true terms and conditions of work mean that they should be classed as 'workers' rather than 'self-employed'. However, the dispute is about more than just a label, and a successful outcome for the drivers would mean serious and widespread ramifications for businesses throughout the UK.

The claims against Uber are brought by 19 drivers and supported by the trade union GMB, with two test cases currently being heard. Uber labels all drivers as 'self-employed' as its business model benefits from the flexibility and costs savings associated with this status. For example, it does not have to operate PAYE, pay employers' national insurance contributions, or abide by basic UK employment rights.

'Self-employed' individuals generally fall outside the scope of most employment laws and have no employment rights, whereas 'employees' enjoy the greatest level of employment law protection. 'Workers' make up a third employment category and this status attracts some basic employment rights.

Determining an individual's employment status can be complex, and often leads to disputes. Key considerations include assessing whether the individual is required to provide services personally, whether they must accept and make themselves available for work offered, and the degree of control exerted over them by the business. Other factors may include an assessment of the pay and benefits provided, whether they must work exclusively for one company, and the nature and length of the engagement with a business.

One of the claimants in the present case, James Farrar, has asserted that his 'main job' and 'main work' was driving for Uber and that drivers felt obliged to accept jobs, as if they did not accept two or three jobs in a row they would be 'logged out' of the app and restricted from working. His argument is that this is more characteristic of a worker's relationship with the

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organisation, and that he should therefore be entitled to a range of benefits associated with that status.

Workers are entitled to national minimum wage, paid holiday, mandatory rest breaks, and protection under discrimination and whistleblowing legislation. Farrar claimed that after expenses, he received only £5.03 per hour, well below the current national minimum wage rate (£6.95 per hour). Uber maintains its position that all drivers are self-employed, as they can allegedly choose when they work and have no obligation to work exclusively for Uber.

A successful outcome for the drivers in this case would have far-reaching implications. Not only will the decision impact the other 17 outstanding claims against the organisation, it is estimated that more than 30,000 individuals are engaged by Uber as drivers in London. A positive outcome for the drivers could result in many thousands following suit by commencing legal action.

If successful, not only will the drivers acquire the employment rights set out above, they could also receive pay going back up to two years in respect of underpayments of national minimum wage and holiday pay. Uber may also have to make substantial payments to HMRC.

On a wider scale, many UK businesses engaging self-employed contractors could be vulnerable, and Uber is not the only organisation currently facing litigation on this issue. The delivery company Hermes has recently faced criticism for paying its couriers less than the living wage on the basis that they are 'self-employed'. Four other cases are also due to be heard later this year and in early 2017 against Excel, City Sprint, Addison Lee, and eCourier, brought by cycle couriers arguing that they are not genuinely self-employed, working up to 50 hours per week for one company alone and receiving only £2 to £3 per parcel delivered.

The potential consequences of this decision cannot be underestimated. A judgment in favour of the drivers could open the floodgates to many more claims from individuals across the UK who also believe they have been wrongly labelled. Businesses engaging self-employed contractors will need to review their relationships with these individuals, to assess whether they could be exposed to similar litigation, which could result in significant financial outlay.

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