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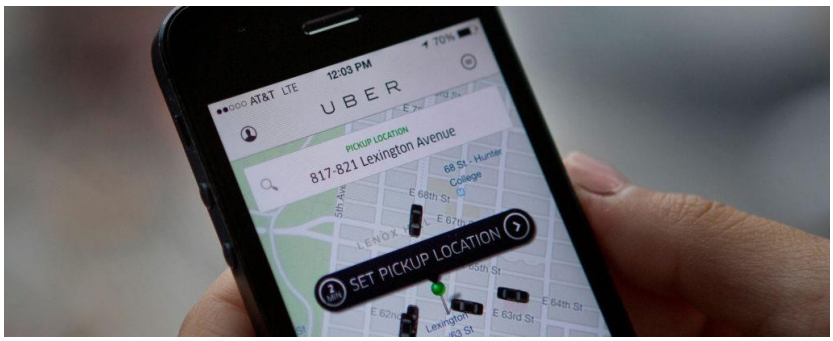
Chris Weaver: What does the Uber ruling mean for its employees?

Rebecca Clarke Tuesday, October 3, 2017



The recent ruling by Transport for London (TfL) that Uber was not "fit and proper" to hold a London private hire operator licence has rekindled the debates surrounding this often controversial, disruptive and innovative tech company, regulation of the UK's growing gig economy, employment rights and customer safety.

The reasons given by TfL for not renewing Uber's licence are that it considers "Uber's approach and conduct demonstrate a lack of corporate responsibility in relation to a number of issues which have potential public safety and security implications." These include its approach to reporting alleged serious criminal offences by its drivers, obtaining medical certificates and driver's background checks and the use of software known as "Greyball" to prevent officials from undertaking regulatory or law enforcement duties.

Whilst the reasons given by TfL for not renewing Uber's licence go beyond the issue of its drivers' status and rights, they are not necessarily unconnected. A key part of Uber's business model is that its drivers are self-employed. This helps keep down the cost of its service since it means Uber does not have to pay employer's national insurance contributions and its drivers are denied certain rights available to employees or workers such as payment of the national minimum wage, sick pay and holiday pay.

One factor in determining whether someone is self-employed or an employee is the degree of control exercised over how they carry out their work. Typically an employer will exercise a far higher degree over how an employee carries out their duties than a customer or agent would with a self-employed person. Uber's desire to demonstrate that its drivers are self-employed in order to uphold its business model means it has perhaps approached certain matters in ways which have not met with TfL's approval, for example in its approach to properly vetting its drivers for criminal records and medical fitness or investigating and reporting allegations of misconduct by its drivers appropriately. The more proactive an approach Uber were to take in these areas the

easier it would be to argue that its drivers were its employees or, at the very least, workers.

At the same time as it faces the TfL licence renewal dispute, Uber finds itself in the Employment Appeal Tribunal (EAT) appealing against the decision in Aslam v Uber BV that its drivers are workers and so entitled to the national minimum wage, sick pay and paid holiday. Here Uber's argument is that it is an agent for drivers, not their employer, and so it does not need to meet employers' obligations. It says that its business is similar to that of traditional minicab firms which also engage drivers on a self-employed basis, the only difference being that Uber's app allows it to run this model on a far larger scale. However, perhaps significantly, only two days before the Uber EAT case started an employment tribunal held that Addison Lee drivers are workers, not self-employed. Whilst not binding on the EAT, this decision challenges the basis of the traditional minicab firm model on which Uber now seeks to rely. It is likely that the EAT's judgment will be reserved and we may not see it until later this year. Whichever side loses, it seems likely the case will go to a further appeal.

Meanwhile, in relation to the dispute with TfL, Uber's licence expired on 30 September. It is appealing TfL's decision and its service can continue to operate while the appeal is underway. If Uber's appeal is unsuccessful then its 40,000 London drivers would no longer be able to operate in London through its service. However, Uber has apologised and indicated that it is willing to "make things right" in order to continue operating in London. It seems possible that a compromise with TfL can be reached – quite what this means for Uber's current business model and the creation of a "level playing field" with black cabs and other operators remains to be seen.