

Article by **Chris Weaver**, Employment solicitor at **Payne Hicks Beach** first published at HR Review online on 6 November 2015

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HRreview



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Chris Weaver: Just what is the employment status of Uber drivers?

CHRIS WEAVER FRIDAY, NOVEMBER 6, 2015

UBER

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Over the summer it was reported that the GMB trade union was launching legal action against Uber over its treatment of drivers who are GMB members. It claims that drivers working for Uber are in fact “employees” or “workers” and not, as Uber asserts, self-employed “business partners”. If the employment tribunal agrees that the drivers are workers or employees then Uber will face substantial liabilities for failing to grant them basic rights under employment law.

Uber’s business model benefits from the flexibility and cost-savings achieved by classifying drivers as self-employed. This includes not having to operate PAYE or pay employer’s national insurance contributions, as well as not having to respect certain basic rights conferred on workers and employees under employment law. The potential cost savings make engaging self-employed contractors attractive to many businesses. But determining employment status can be complex and the courts do not always agree with the label given to the working arrangement. So, what then is the distinction between an employee, a worker and a genuinely self-employed contractor? What rights do employees and workers have that self-employed persons do not? What are the risks to businesses that get the employment status of their staff wrong?

Whether an individual is an employee, a worker or self-employed will depend on a number of factors. Key considerations include whether the individual is required to provide their services personally, whether they must make themselves available to do work that is offered and the degree of control exerted over them. Other factors such as the nature and length of the

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engagement, pay and benefits provided, exclusivity and integration into the business are also likely to be relevant.

Workers and employees have certain rights and protections under employment law. A worker is entitled to be paid the national minimum wage, to receive a minimum of 28 days paid annual leave and to mandatory rest breaks. They are also protected under discrimination and whistleblowing legislation. In addition to these rights, employees have the right to claim unfair dismissal and to receive a statutory redundancy payment after two years' service, to statutory sick pay and to proper disciplinary and grievance procedures.

The consequences for businesses that get employment status wrong can be severe. Failure to operate PAYE correctly and pay employer's national insurance contributions can result in HMRC charging penalties and interest on amounts properly due. Failing to pay at least the national minimum wage can lead to civil liability and criminal prosecution. A business which has failed to give staff paid holiday and statutory sick pay can find itself facing multiple back-dated claims which could potentially run into many thousands of pounds. Employees and workers can also bring claims in the employment tribunal where they have been denied rest breaks or required to work more than 48 hours per week on average in contravention of the Working Time Regulations. Reputational damage is another obvious concern. The potential liabilities to businesses that get employment status wrong can therefore be substantial and this underlines the need for careful consideration of this issue.