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## Do you know your rights within the gig economy?

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Despite the flexibility and tax advantages of working within the gig economy, controversy over exploitation continues to plague the sector. Legal experts **Chris Weaver** and **Orla Bingham** write.



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Does the rapidly growing gig economy have a robust legal framework to protect the rights of employees?

The ‘gig economy’ is a new phenomenon. It broadly describes an arrangement where independent individuals are engaged by organisations on a temporary or short-term basis, known as ‘gigs’.

Uber, Deliveroo, and other online service platforms typify this kind of arrangement. However, the term encompasses individuals across a number of sectors, beyond online service apps. Whilst the gig economy is growing quickly, it is also increasingly plagued by controversy due to concerns over exploitation, through well publicised Employment Tribunal cases and industrial action.

One driving force behind this phenomenon is the increasing preference of organisations and individuals towards flexible and independent working, digressing from the traditional nine-to-

five employment. The issue is that individuals in the gig economy are engaged on a 'self-employed' basis, without employment rights and protection. In theory, such individuals work without the organisation's control, and are therefore not subject to performance assessments and disciplinary procedures. There is no 'mutuality of obligation' to provide and accept work, and individuals can offer up suitable substitutes to carry out their work if they wish.

A growing number of highly skilled and well paid self-employed 'consultants' are emerging, electing to benefit from the flexibility and tax advantages this status offers. Such persons are usually commercially minded, have access to legal advice and have sophisticated 'consultancy agreements' to partially provide commercial protection.

However, this differs from the reality facing many 'gig' workers. It has been widely reported that organisations systematically 'move the goalposts'. Payments per job drop substantially, often to less than NMW. Individuals are sent performance reports and threatened with termination if 'improvement' isn't forthcoming. Many allege they are obliged to accept every job which arises, or they become temporarily excluded from picking up work as a kind of punishment.

Organisations are therefore blurring the lines, availing of the best of both worlds; control over individuals without the obligations, such as sick pay, NMW, pensions, unfair dismissal protection and so on.

Unfortunately, employment law wasn't built to safeguard this kind of workforce. Society needs to encourage innovation, and allow organisations to engage a flexible workforce to suit commercial needs. However, there is a competing duty to adapt traditional employment concepts to provide protection to these increasingly vulnerable individuals.

Problematically, employment status is determined by the nature of the relationship, not by legal definitions. Defining current employment status boundaries may assist some organisations in comprehending the true extent of their obligations, but this may not deter unscrupulous organisations who choose to push these boundaries.

Organisations must review their practices, look at the heart of their relationships with individuals and ensure they treat them appropriately. Fairer treatment may have to voluntarily start within businesses, and organisations may need to be more resourceful.

Unilateral changes to payments and other arrangements are disconcerting and disempowering, and organisations may require a policy of consulting over any major proposed changes.

Some may also ensure individuals receive at least the NMW rate, providing the certainty of fair and stable payments. Many individuals are claiming their circumstances make them 'workers' thereby entitling them to NMW. A successful outcome could result in considerable liability for historical underpayments to these individuals. Setting a minimum rate now could minimise any such liability. The outcome of the Tribunal cases against Uber etc. on this point will be pertinent.

Of course, consumers are a major driving force behind the Gig Economy. Online apps facilitate daily life by allowing quick and cheap access to services, but this comes at a price. As a society, we may also have to consider whether we are prepared to pay a little more, to ensure those providing these services are treated more fairly.

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