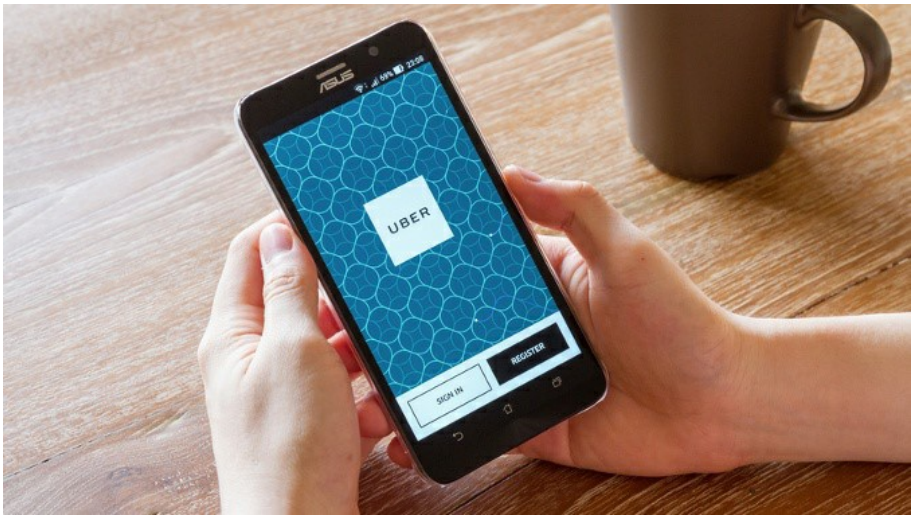
Supreme Court Uber decision good for gig economy but offers little for contractors



The Supreme Court has this morning confirmed the decision to award statutory rights to two former Uber drivers, in a significant decision for gig economy workers. In the case of *Uber BV and others v Aslam and others*, the tribunal rejected the US taxi-hailing company's appeal against the classification of former drivers Yaseen Aslam and James Farrar as 'workers' during their respective engagements.

"Uber drivers and other gig economy workers should be celebrating today," comments ContractorCalculator CEO Dave Chaplin. "The verdict means that as workers they will be entitled to a number of statutory benefits that come with worker status and Uber will have to face up to their employer responsibilities.

"Firms should not be misclassifying workers in contrived ways to avoid fulfilling their duties as employers by providing workers their due rights.The drivers were not carrying on their own business undertaking, were providing personal service, and were heavily controlled by the Uber app."

"The take-away for the contracting community regarding IR35 and Off-Payroll matters is the reinforcement of what we know already – make sure the contractual paperwork is correct and a true reflection of the engagement. Then there should be no issues."

Supreme Court upholds 'worker' rights claim

This morning's Supreme Court ruling upheld the 2016 employment tribunal decision which determined that the drivers in question were entitled to certain rights and protections, including the minimum wage under the National Minimum Wage Act 1998 and paid leave under the Employment Rights Act 1996.

This decision was made on the findings that the drivers were 'workers' of Uber whenever they:

> 1. had Uber's app switched on;
> 2. were within the territory in which they were authorised to work; and
> 3. were able and willing to accept assignments

The decision was subsequently, and unsuccessfully, challenged by Uber via both the Employment Appeal Tribunal (EAT) and the Court of Appeal, with the US taxi-hailing company contesting that the written agreement between the drivers and Uber was inconsistent with a worker

relationship.

Uber outcome hinged on application of Autoclenz ruling

As a result of Uber's assertion concerning the written agreement, the case was considered largely in relation to the Supreme Court Autoclenz v Belcher ruling. In this landmark case, a group of car valeters were determined to be employees of Autoclenz after the contracts issued by the car detailing business were deemed inconsistent with the true arrangement between the parties.

However, though based on the same employment case law principles, Chaplin stresses that the circumstances mean contractors needn't read too much into the Autoclenz decision when considering their own IR35 status:

"It's important to remember that Uber is an employment case, between two parties who disagreed what the true agreement was. For IR35 cases, where both the client and the contractor agree the relationship is 'outside IR35', Autoclenz may not come into play, because there is no mischief, artifice or sham whereby one side has tried to exercise their bargaining power to impose a contractual arrangement which is not a true reflection of the reality."

What does the decision mean for contractors?

Despite being an employment tribunal case, the outcome will have been of interest to some contractors as it required application of the same employment case law principles that underpin IR35. Case law is ever evolving, and with Supreme Court rulings often establishing new precedents, there was always the potential for the judgement to have repercussions for the contracting sector.

However, Chaplin notes that the working models adopted by the drivers in question means there is little to glean from the outcome for limited company contractors who may be considering legal action in response to an 'inside IR35' status assessment:

"The Uber case is fact-specific and about workers who were self-employed sole traders, not using limited companies. PSC contractors will not be able to overcome the interposition of a limited company and claim they are workers or employees.

"Instead, their best hope might be via the Agency Workers Regulations (AWR), claiming holiday pay, like the Susan Winchester case. But, to defend against this, the client is likely to ask the contractor to demonstrate they were paying taxes correctly as inside IR35 – which discourage some contractors from proceeding with litigation."

Chaplin concludes: "There are other cases due to be released that will have a much more interesting bearing on IR35 status for contractors."

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