



The small print for **BIG IDEAS**

Disclaimer: This online publication describes the law in general terms. It is not intended to provide legal advice on specific situations and should not be relied upon as a source of legal advice.

Date produced: July 9, 2021

qLegal Online Publication

What Does the Uber Court Case Mean for My Business?

Under UK employment law, the question of an individual's employment status is significant in determining their legal rights, as well as the obligations of their employer. The recent Supreme Court decision in the case of *Uber BV & Ors v Aslam & Ors* [2021] UKSC 5 is a significant event in UK employment law, especially concerning the so-called 'gig economy' which has thrived in recent years. In summary, the court unanimously found that Uber drivers cannot be classified as self-employed and, instead, should be classified as 'workers' for the purposes of UK employment law.

This toolkit is designed to explain the potential effects of the *Uber* case on your business, covering the obligations for hiring employees, freelancers and workers in the UK. This toolkit will also explore the interaction between the law, as outlined in *Uber*, and the business decisions you make daily. We hope that our toolkit will offer you, as an employer, clarity on several key issues in light of the *Uber* decision.

Types of Employment

Before considering the facts and outcomes of the *Uber* case, we shall discuss employment status in the UK. As discussed in the qLegal toolkit entitled "What to Consider When You Hire and/or Work with Others", available on [qLegal's Resources page](#), an individual's employment status is important in determining their legal rights and the responsibilities of the company they work for. Under UK employment law, there are three main types of employment status. Staff that you hire may be classified as either **workers**, **employees** or **freelancers**.

What is a 'Worker'?

An individual is usually classified as a worker if they are providing work or services under a contract for a monetary reward or some other benefit in kind, such as the promise of a contract or future work. To fall within the category of 'worker', the individual will have to be



providing a personal service or work, which means that they would only have a limited right to send a substitute to do the work on their behalf.

The small print for BIG IDEAS

The Duties of a Company Towards Its Workers

Workers are entitled to a number of important employment rights under UK employment law:

- To be paid the National Minimum Wage.
- Auto-enrolment into a pension scheme
- Protection against unlawful deductions from wages (being underpaid or unpaid).
- The statutory minimum level of paid holiday.
- The statutory minimum length of rest breaks.
- The right to opt-out of working more than 48 hours on average per week, if they choose.
- Protection against unlawful discrimination.
- Protection for reporting wrongdoing in the workplace ('whistleblowing').
- To not be treated less favourably if they work part-time.

Workers may also be entitled to:

- Statutory Sick Pay
- Statutory Maternity/Paternity Pay
- Statutory Adoption Pay
- Shared Parental Pay

What is an 'Employee'?

An employee is an individual who works under a contract of service or employment, including apprenticeship contracts.

The Duties of the Employer Towards Employees

Employers are obliged to afford a comprehensive suite of legal rights to their employees. Employees benefit from all the rights given to workers, plus:

- Statutory Sick Pay
- Statutory maternity, paternity, adoption and shared parental leave and pay (workers are only eligible for pay, not leave)
- Minimum notice periods if the employee's employment will be ending, e.g., if the employer is dismissing them
- The right to request flexible working
- Time off work for emergencies
- Protection against unfair dismissal
- Statutory Redundancy Pay

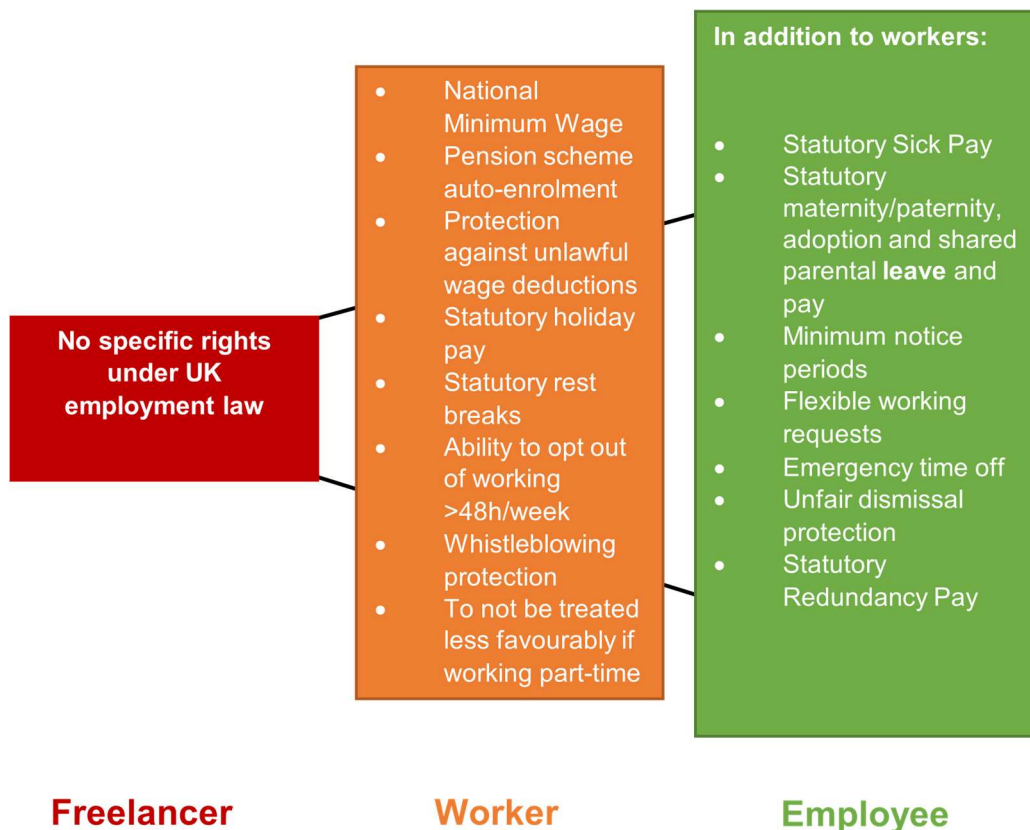
qLegal

The small print for BIG IDEAS

Please note that some of these rights require a minimum length of service. For example, an employee only has the right to protection against unfair dismissal after 2 years of continuous service.

What is a 'Freelancer'?

Freelancers are sometimes referred to as 'independent contractors', freelance 'consultants' or 'self-employed'. Freelancers work for themselves and run their own businesses. As such, they often provide their services through professional service companies. They are, therefore, not entitled to the employment rights enjoyed by employees or workers. However, freelancers are entitled to legal protections such as protection from discrimination and to work in a safe working environment while on their clients' premises.



A summary of the rights associated with each type of employment



The small print for **BIG IDEAS**

How Do You Determine the Employment Status of Somebody That You Hire?

The Supreme Court decision in the Uber case reaffirms that the assessment of an individual's employment status is always fact specific. For example, if you were to label a person as an "employee", their actual employment status depends on the realities of the real-life employment relationship between that person and your organisation/company. Key factors that point towards employment or worker status are the level of control that you have over the way that the individual carries out their activities. Any obligation by you to provide a minimum amount of work and/or an obligation on the individual to provide a personal service, rather than being able to send a substitute, points towards a person acquiring employee or worker status.

The tests for determining an individual's employment status are not strictly defined in UK employment law, but have been well-established in case law:

1) Mutuality of Obligation

- Whether an obligation on the employer to provide work exists, as well as a reciprocal obligation on the part of the individual to perform work.
- In the case of **workers**, this obligation seldom exists. For instance, with Uber, a driver is not under an obligation to accept the trips they are offered, and Uber is not under an obligation to provide trips when there are no customers in the area requiring their services.
- In the case of **employees**, this obligation usually exists. An employer of a full-time employee is obliged to offer the employee work. Equally, the employee is obliged to accept the work offered.
- In the case of **freelancers**, this obligation does not exist. For instance, a company that has previously sought the services of a freelancer is not obliged to offer future work, and the freelancer is not obliged to accept future work offered.

2) Control

- The consideration of the degree of control a company exercises over the individual's actions, such as the manner and timing of the work.
- In the case of **workers**, this test is usually met as the company they are working for will determine their working activities. For instance, with Uber, many aspects of the drivers' working day, such as the payment received for each trip, was determined by the company and not the individual.
- In the case of **employees**, this test is typically met. Similarly to workers, the working activities of an employee will be dictated by their employer.
- In the case of **freelancers**, this test is not usually met. Freelancers have more freedom over how they work compared to workers and employees. For example, freelancers can determine how much they charge for their services, as well as their working hours.

qLegal

The small print for BIG IDEAS

3) Provision of Personal Service

- The assessment of the right of the individual to bring in another person to carry out the work in their place.
- In the case of **workers**, this test is usually met. Workers are typically unable to delegate their work to other individuals. For instance, with Uber, each driver is vetted and therefore must complete the trips they are assigned themselves.
- In the case of **employees**, this test is usually met. Similarly to workers, employees must perform the work themselves.
- In the case of **freelancers**, this test is usually not met. Freelancers are merely required to provide a service – this does not extend to a requirement of personal service or skill.

Uber BV & Ors v Aslam & Ors [2021] UKSC 5

In this case, the Supreme Court had to determine the employment status of drivers within the ride-hailing service. Uber suggested that their drivers should be viewed as freelancers. Meanwhile, the claimants (two Uber drivers), argued that they were workers.

In determining the correct classification, the court suggested five specific points relating to the relationship between the drivers and Uber:

- 1) Uber controls how much its drivers are paid for the work they do. The company sets the fare for each trip and decides the service fee deducted from the fares. Additionally, Uber has the right to control whether fares are fully or partially refunded following a complaint raised by a passenger.
- 2) Uber requires its drivers to sign and accept a standard written agreement, setting out the contractual terms governing the services performed by the drivers. The drivers are unable to amend these terms.
- 3) Once drivers log onto the Uber application, Uber exerts control over drivers' choices about whether to accept or decline passenger journey requests. Uber does not inform drivers of the destination of the journey before the driver accepts, meaning drivers are unable to decline requests based on passenger destination. Uber can penalise drivers for declining or cancelling too many requests. First, Uber may send warning messages before taking matters further to log drivers out of the app for 10 minutes if (perceived) performance does not improve.
- 4) Uber exerts a significant amount of control over how its drivers deliver their services. For instance, Uber guides the driver to the pickup location and selects a specific route for each journey. Whilst the drivers do not have to follow this route, they are likely to receive negative customer feedback via the application's rating system if they do not. Uber relies on customer ratings to monitor the performance of its drivers; where ratings are deemed substandard, drivers' access to the app can be withdrawn.

qLegal

The small print for BIG IDEAS

- 5) Uber limits the communication between its drivers and passengers to ensure that no relationship develops between driver and passenger beyond the single journey. The company handles all complaints and future interactions.

A common theme across the five points raised by the Supreme Court was that Uber exerted a significant amount of control on its drivers. The Supreme Court held that the drivers are workers on this basis.

What Business Choices Did Uber Make After the Court Decision?

Following the decision of the Supreme Court, Uber decided to keep its business relationship with its drivers the same, treating them as workers.

Uber could have opted to change its relationship with its drivers so they would be recategorised as freelancers. However, it is likely that Uber did not want to rescind any control it had over its drivers and so decided to keep working arrangements the same. Uber, therefore, became obliged to provide the additional employment rights enjoyed by workers, as per the law.

It is important for you, as a business owner, to be aware that you have a degree of choice when approaching aspects of employment law. While you are governed by the various tests set out in legislation (and interpreted by case law) and you must provide your staff members with the necessary rights according to which employment status they fall under, you can determine the relationship between you and your workforce. It is this relationship that, ultimately, determines the employment statuses of your members of staff.

What Does the Decision Mean for Your Business?

A key point to take away from the Uber decision is that merely categorising or labelling staff as either employees, freelancers or workers within their contract of employment does not necessarily mean that this is the case in the eyes of the law. Ultimately, the nature of the interaction between the business and the staff member is crucial, such as the amount of control the business exerts on the individual while at work. As a business owner, you can choose how you wish you structure your working relationship with your staff, but you must adhere to the statutory obligations associated with each type of employment.

This online publication was drafted by LLM students participating in qLegal, the pro bono commercial law clinic at the Centre for Commercial Law Studies, Queen Mary University of London: Dan Wheatley and Rik Mukherji.

qLegal provides free legal advice and resources to start-ups and entrepreneurs on intellectual property, data protection, corporate and commercial law. See <http://www.qlegal.qmul.ac.uk/> for more details and to book your appointment now.