TE LEGAL UPDATE

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Uber case redefines 'worker'

REGULATORY

On 19 February 2021, the Supreme Court handed down its decision in the Aslam v Uber case, which will set the approach for employment tribunals in the determination of 'worker' status for the next decade (see also *www.is.gd/qegile*).

The Supreme Court has reached broadly the same conclusion as earlier courts: that Uber drivers are workers, and not independent self-employed drivers. This did not perhaps surprise many lawyers.

This ruling means that some Uber drivers are entitled to claim the minimum wage, including back pay through the Employment Tribunal or the County Court. Additionally, these drivers are entitled to be paid for their entire working day and not just when they had a rider in the cab. They can also claim 5.6 weeks paid annual leave each year, and will have access to other rights including union representation.

This judgment does not however, afford 'workers' the rights reserved for 'employees', such as the right to a redundancy payment or to claim unfair dismissal.

Uber had argued that the courts had previously been mistaken in law by disregarding the written contract between Uber and the drivers, and between the Uber company and the passengers. Written agreements stated that the role of Uber is to provide technology services and act as a payment collection agent for the driver.

In dismissing the appeal, the Supreme Court unanimously held that the way in which a relationship is characterised in a written agreement is not the appropriate starting point in applying the statutory definition of a 'worker' and should never be treated as conclusive, even if the facts of the case could have more than one legal classification. The Court noted that workers' vulnerabilities which create the need for statutory protection are subordination to and dependence on another person and his/her degree of control.

Fact File

Interruption claim?

The recent decision of the Supreme Court on business interruption insurance could be a lifeline for small businesses.

When the COVID-19 pandemic stuck, many insurers rejected claims under business interruption insurance policies. The FCA took action by commencing a court case against some of the major insurance companies to determine the correct way in which these policies should be interpreted.

The court process has now come to an end, and the outcome means that some businesses that were initially rejected cover under their business interruption insurance policy may actually have a valid claim, depending on the specific wording of each policy.

Backhouse Jones is now offering a fixed-fee service to review insurance policies against the detailed judgment.

REGULATORY

3.5 tonne exemption to fall

The UK has not required operators to hold an operator's licence to run vehicles domestically with a maximum permitted weight (MPW) under 3.5 tonnes, and even on an international EU basis, that threshold currently remains the same. However, the situation in terms of EU vehicle operation has an end date, and a date for change that may well lead to some new UK legislation.

According to Article ROAD.6(d) of the EU-UK Trade and Cooperation Agreement (TCA), from 21 February 2022, goods vehicles with an MPW of over 2.5 tonnes but below 3.5 tonnes will no longer be exempt from holding a valid licence (that is, a UK Licence for the Community) in order to travel to the European Union.

As that document is currently issued alongside a UK standard international operator's licence, this raises an implementation issue, as the UK differs from the EU on this point.

The requirements for an operator to hold a UK Licence for the Community include:

- To have an effective and stable establishment
- To be of good repute
- To have appropriate financial standing, and
- To have the requisite professional competence.

These may sound familiar; they are effectively the same requirements prescribed in UK domestic law to hold a standard national or international operator's licence.

There will need to be some thought before the deadline into how international van operators with vehicles under 3.5 tonnes but over 2.5 tonnes are going to be able to acquire a UK Licence for the Community as prescribed under the TCA.