



Wednesday 15 November 2017

The Deliveroo decision – good news for business?

The Central Arbitration Committee (CAC) has decided that a group of Deliveroo riders were not "workers", in an application for trade union recognition by the Independent Workers Union of Great Britain (IWGB).

The IWGB had applied to the CAC for statutory recognition by Deliveroo, in respect of a group of riders based in Camden, North London. Trade union recognition only applies in respect of employees or workers (not self-employed people). So, before the application could proceed, the CAC had to decide whether the riders were workers.

Since the riders were allowed under their contracts to use a substitute to do their deliveries, and some of them had actually done so, the CAC concluded that the riders did not work for Deliveroo "personally". This meant that they could not be workers, so the application failed.

What happens now?

A decision of the CAC can be challenged in the High Court, but there is no indication yet of whether IWGB plans to take this route. Separately, a number of Tribunal claims have reportedly been brought against Deliveroo by riders claiming that they are workers and therefore entitled to the national minimum wage and holiday pay. A CAC decision is not directly binding on an Employment Tribunal and it will be interesting to see how far the Tribunal considers it relevant.

What does this decision mean for other businesses?

There are two key points to take away:

- The CAC relied heavily on the fact that some riders had sent a substitute on occasions. It didn't matter that this happened infrequently – the fact that it had happened at all demonstrated that the substitution clause was genuine. Simply having a substitution clause in a contract is not enough on its own. There must be convincing evidence either that substitution has actually happened, or if not, that it could happen in practice (though this may be harder to prove).
- The riders failed at the first hurdle because the CAC found they were not working personally. This meant that the CAC didn't need to look at any other parts of the contract. In contrast the CAC had found the riders were working personally, then it would have looked at all of the other elements of the contract in

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order to assess whether the riders were workers or self-employed (for example, control, ability to work elsewhere). When drafting a self-employed contract it is important to ensure that every aspect of the contract is consistent with self-employment, and also that what happens in practice matches what the contract says.

If you would like to discuss how any of the issues outlined above affect your business, please get in touch with your usual employment department contact or any of the employment partners below.

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