

Is employment law fit for the gig economy?

There's an uprising within the gig economy: making a stand over pay packages is catching on. This summer, [Uber drivers have taken the firm to an employment tribunal](#), [Deliveroo couriers withdrew their labour](#) over plans to move them to a payment per delivery rather than an hourly rate, and [UberEats couriers took action over pay](#).

Importantly, UK employment law differentiates between workers, employees and the self-employed. The distinctions matter because workers and employees have certain rights, such as entitlement to the national minimum wage and paid annual leave. Employees also have additional rights, such as the right to statutory sick pay and protection from unfair dismissal (normally subject to two years' service). Self-employed contractors have no such rights.

This is separate from HMRC's definition of self-employment, and an individual may be considered to be self-employed for tax purposes while the courts might find that they are in fact a worker or employee.

The drivers who have been in court and the couriers who have been protesting are all classed as self-employed by the firms who pay them. As a result they aren't entitled to the various rights such as the national minimum wage and sick pay. The [Uber drivers' case](#) will decide on their status under existing employment law, but as the number of people in the gig sector grows, it's time to ask whether the law is protecting those who it needs to protect.

The starting point is that in law there must be "mutual obligation" for a contract to actually exist, irrespective of the type of status. This basically means that each party must have an obligation to fulfil their part of the deal. Examples could be a decorator agreeing to paint a house for a set fee or a courier agreeing to deliver something for a fixed sum. In both cases, the parties would have an obligation to perform their side of the bargain.

For worker status, the individual must also be obliged to provide work or services personally, rather than sending another person in their place. They must not be providing the work or services as a business.

For employee status, again the work or service must be being done by the person under contract, but there also needs to be an element of control by the employer over the employee. Control in this context could mean, for example, whether or not the individual is bound by a disciplinary policy. Other factors for determining status could be considered, too.

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