



December ByteSize Employment Law

Uber news

In the first of a line of cases dealing with employment status in the gig economy, the Employment Tribunal accepted that Uber drivers are to be recognised as “workers” rather than self-employed. Therefore they are entitled to some employment rights including national minimum wage and paid annual leave.

Uber argued that the drivers were running their own businesses, keeping their own accounts and declaring their own taxes and were therefore classed as self employed. However, the Tribunal contended that Uber were responsible for recruiting drivers as well as having an earning guarantee scheme, a complaints procedure and conditions regarding routing and rebates as well as controlled their ability to accept or decline fares.

The case was *Aslam and others v Uber BY and others*.

Dates for the diary – Gender pay gap reporting

Who? Private and voluntary sector businesses who employ 250 or more employees: The definition of an ‘employee’ can be found in the Equality Act 2010 and includes many self-employed workers.

Now: Check that your organisation collects the relevant data needed to undertake gender pay gap reporting.

5 April 2016: Begin collecting data for the first reporting period. You may need to collect figures from as early as 5 April 2016 for bonus pay data whereas pay data only covers payments for the April 2017 pay gap results.

Early 2017: It is expected that The Equality Act 2010 (Gender Pay Gap Information) Regulations for private and voluntary-sector employers are going to come into force around this time. If so, all private and voluntary employers with 250 or more employees will be required to publish information about their gender pay gap results.

6 April 2017: Gather your gender pay gap results.

4 April 2018: Publish results of the gender pay gap analysis on your organisation’s website so that it is publicly accessible. A signed statement confirming the accuracy of the information must accompany the results. Both the results and the signed statement must remain on the website for at least three years. You must also upload the results onto the Government’s reporting website.



New tax changes

The Autumn Statement was delivered on 23 November 2016. It included a number of updates to employment matters including tax changes to 'employee shareholder' status and restrictions on benefits available from salary sacrifice arrangements.

'Employee shareholder' status waives a number of employment protections including the right to redundancy payment and protection from unfair dismissal in return for a minimum of £2,000 shares in the business. Currently, the shares qualify for income tax and capital gains tax reliefs but for agreements entered into after 16 March 2016, the relief was restricted to a lifetime allowance of £100,000. The new plans are to completely abolish the relief for shares acquired in line with the 'Employee shareholder' agreement on or after 1 December 2016. However, the tax advantages will continue to apply to any arrangement created before 1 December 2016.

From April 2017, the only benefits which will continue to benefit from tax and NI relief if provided through salary sacrifice will be enhanced employer pension contributions to registered pensions schemes, childcare benefits, cycles and cyclists' safety equipment provider under the cycle to work scheme and ultra-low emission cars. The current arrangements that are already in place will be protected until April 2018 for car, accommodation and school fees, until April 2021.

It has also been confirmed that tax free termination payments of up to £30,000 will be retained but new measures from April 2018 mean that NI contributions will be payable on payments above £30,000.

Privacy in the workplace

In a recent case it was decided that there is no minimum level of compensation for workplace privacy claims following misuse and disclosure of an individual's personal data.

The Metropolitan Police made enquiries of another police force as part of a disciplinary investigation to find evidence that the employee had taken unauthorised holiday while off sick.

The former employee brought claims under the Data Protection Act 1998 as well as the Human Rights 1998 and was awarded a figure of £9,000 for the unlawful use and disclosure of personal data.

The minimum threshold in hacking cases is £10,000, which the judge distinguished from workplace privacy claims. It was held that the damages in this case should be substantial, but

A blurred photograph of an office interior, showing several people in business attire moving through a space with large windows. The image is intentionally out of focus to convey a sense of activity and a professional environment.

less than the minimum threshold in hacking cases on the basis that although the breach was serious, it did not involve the disclosure of highly personal material for gain, wide distribution, or with the intent to injure to embarrass.

The case was *Brown v Commissioner of Police for the Metropolis*.

Think before emailing home!

An employee has been ordered to pay a fine of £23,000 as well as costs of over £14,000 for sending emails from her work email address to her personal account without authorisation from her employer. The emails were sent in the two months prior to her handing in her resignation and contained confidential information relating to her work which were of commercial value to her employer.

Every employee is obligated to respect the confidentiality of their employer's commercial information. Employers should make it clear what information is confidential in order to protect itself as well as its personal data. Employers should also ensure that their confidential information is protected post-termination by imposing covenants in the employment contract.

If your business uses remote access or employees are permitted to work from home, it might be permissible to send information to a personal account. It is good practice to ensure that employees are required to obtain authorisation before doing so, by having the relevant clause in the employee's contract.

New Privacy Code of Practice

The ICO (Information Commissioner's Office) has released its first piece of guidance on how to comply with both the existing Data Protection Act and the EU's General Data Protection Regulation. The Code of Practice is intended to help organisations better explain how they're using personal data. It contains examples of what should be included in a privacy notice, how and when information should be delivered to individuals as well as useful tips on how to write a notice.



Employment & HR – we can help

Our team of employment lawyers don't just provide legal advice on all people issues.

We spend our time learning about your business and understanding your objectives - enabling us to provide commercial solutions, delivered on time, and tailored to fit.

We'll advise throughout the employment relationship from recruitment and selection through to discipline and dismissal - and everything in-between.

Experience

Our clients are a mix of small to medium sized, owner managed businesses and large, household names. As a result, we are used to dealing with, and tailoring our language and approach to meet the needs of both growing businesses and large organisations, dealing with directors and HR professionals.

Stay up to date

Employment is one of the most rapidly developing areas of law. To help guide you through, we'll ensure you are kept up to date with all the latest changes through our series of email updates and regular breakfast seminars.



Training courses

We provide a range of training courses tailored to meet your needs. Our aim is to equip delegates with the skills to be able to deal with new and difficult employment and HR issues.

Through case studies, covering real life transactions, we'll bring the topic to life and provide delegates with an opportunity to put their training into practice!

Included below is a snapshot of some of the training courses we have run in the past, and we can also create specific training courses.

Conducting employee investigations	Managing a TUPE transfer	Dealing with discrimination	Managing sickness absence
Managing poor performance	Family friendly rights	Dealing with discipline & grievance	Essential employment law
Managing stress	Avoiding unfair dismissal	Data protection	Navigating the employment tribunal

Key contacts



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Claire has over 20 years' experience acting for employers in all types of employment disputes. She has particular expertise in more complex cases involving multiple redundancies, collective consultation, TUPE, data protection, whistleblowing and discrimination claims.

Claire joined Actons in 2004 having previously worked at national firms DAC Beachcroft and Shoosmiths.



Nic Elliott
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Nic deals with a broad range of employment law issues, regularly advising on complex and commercially sensitive litigation.

He advises on the exit of senior employees and directors, complex absence management issues and provides general advice on day to day employee relations matters.

He also runs and advises on employee investigations.

He joined Actons in 2012 after 8 years at international law firm, Wragge & Co.