

GIG ECONOMY UPDATES

Following on from our previous issue's article, below are updates in relation to the employment status cases that have occurred since April this year.

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ADDISON LEE

Addison Lee have become the latest company operating in the gig economy to lose their appeal. The case involved Mr Gascoigne, an Addison Lee courier who brought a claim against Addison Lee over holiday pay. In 2017, the Employment Tribunal (ET) found Mr Gascoigne to be a worker and therefore entitled to holiday pay. The ET concluded that his independent contractor contract did not reflect the reality of the relationship. Mr Gascoigne was obliged to perform work personally for the company and was under its control. Addison Lee appealed this decision and in June, the Employment Appeal Tribunal (EAT) upheld the ET ruling and dismissed Addison Lee's appeal.

DELIVEROO

In April, Deliveroo announced that it will provide all its riders with accident insurance and will offer public liability insurance as part of their global package. This initiative is expected to initially cost Deliveroo approximately £10 million, and is being rolled out for their 35,000 riders in 12 countries, including the UK, Italy, Spain, Belgium, Singapore and Hong Kong.

The first ruling over the employment rights of Deliveroo riders has occurred in Spain. A Spanish court in Valencia ruled in a landmark case that a rider for Deliveroo should have been treated as an employee and not as self-employed. The court found that there was an employment relationship between the rider and Deliveroo. Since the ruling, a Deliveroo spokesperson has stated that the rider was on an old Deliveroo contract which no longer reflects the way riders work with Deliveroo.

In June, the High Court in London gave the Independent Workers of Great Britain (IWGB) permission to perform a full judicial review of the earlier decision made by the Central Arbitration Committee (CAC). Last November, the CAC rejected the IWGB's application for union recognition and concluded that the Deliveroo riders were self-employed and therefore not entitled to employees' rights. The IWGB is seeking to represent the Deliveroo riders and states that the riders are being denied basic employment rights such as minimum wage and holiday pay. No date has been set for the case.

DPD

In March, the parcel delivery firm DPD became the first company who operates in the Gig Economy to give its couriers the right to choose how they contract. DPD has offered its 6,000 drivers the right to be classified as workers (in an interim state with paid holiday, sick pay and access to a pension), as a fully-fledged employee or to remain as a self-employed franchisee.

PIMLICO PLUMBERS

The Supreme Court in London announced its verdict on the long awaited case of Mr Smith and Pimlico Plumbers. In a unanimous decision, the Supreme Court found Mr Smith to be a worker and therefore entitled to holiday pay. Mr Smith had brought a claim against Pimlico Plumbers over paid holiday to the Employment Tribunal (ET) in 2016. The Employment Tribunal had found Mr Smith to be a worker and when Pimlico Plumbers appealed this decision in 2017 both the Employment Appeal Tribunal and The Court of Appeals dismissed the case. In June 2018, the Supreme Court also dismissed Pimlico Plumbers's appeal.

The key factors that led to the Supreme's Court's decision were if Smith had an obligation of personal performance and if Pimlico Plumbers was a client or customer of Smith. While Mr Smith had a contract as self-employed, he had an obligation to perform work personally, and the Supreme Court found that there was no contractual right of substitution. In determining if the status of Pimlico Plumbers was that of a client or customer of Smith, the Supreme Court found that there were features of the contract which strongly disagreed with Pimlico Plumbers being a client or customer. Smith's contract imposed various requirements on him, and Pimlico Plumbers's control was reflected in the requirement for Smith to wear a uniform, drive a branded van, carry a Pimlico Plumbers ID and closely follow administrative instructions from the control room. The ruling by the Supreme Court means that Smith will be able to pursue his disability discrimination claims and those for unlawful deductions and holiday pay.

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CALIFORNIA SUPREME COURT

In April, the California Supreme Court adopted a new legal standard that will make it harder to classify workers as independent contractors. The new standard set forth in *Dynamex Operations West, Inc. v. Superior Court* abandons the Borello test which has been used for over thirty years to determine worker status in favour of a three-prong test known as the 'ABC' test.

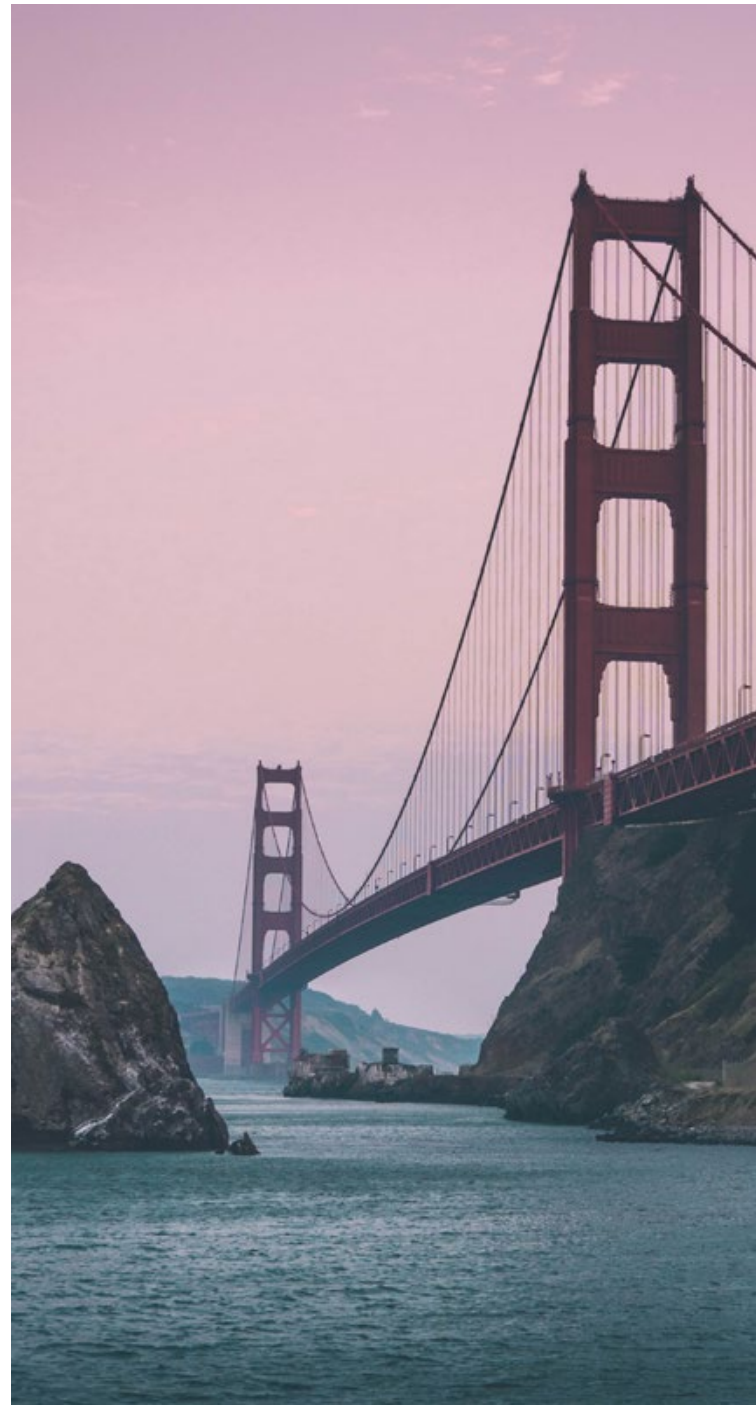
To determine the classification of an independent contractor, all three questions below must be met.

- The worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of the work and in fact
- The worker performs work that is outside the usual course of the hiring entity's business and
- The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

As a result of this new standard set by the California Supreme Court there will likely be a re-classification of many workers in the state. It will be interesting to see how the lower courts will interpret the new test and how this will impact the gig economy.

WHAT IS UP NEXT?

Both Deliveroo and Uber still have cases to be heard towards the end of the year and the UK government is due to provide a further update on the Taylor Review Report discussed in February. The next important case on employment status is Uber and this case is due to be heard by the Court of Appeal in London in October. The ride-hailing app is appealing an Employment Appeal Tribunal decision that ruled that its drivers are workers and not independent contractors. It remains to be seen how the Pimlico Plumbers case ruling will affect the Uber case and all those working in the Gig Economy.





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