

It's a status thing!

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Earlier this year, the Supreme Court upheld the decision of the Employment Tribunal in [Uber B.V -v- Aslam & Others](#); confirming that Uber drivers are workers.

This case highlighted the importance of properly identifying the employment status of individuals to know what employment rights will apply.

Why does employment status matter?

The development of the gig economy, in which individuals are engaged by businesses on a flexible and ad hoc basis, has caused problems in determining employment status.

In employment law, the distinction between the three categories of employment status (employee, worker and self-employed independent contractor) is significant for many reasons.

Some core legal protections apply only to employees; significantly the right not to be unfairly dismissed and the right to receive a statutory redundancy payment.

Workers, though, are covered by some important protections too. For instance, workers are entitled to:

- [paid annual leave](#) (something which is not enjoyed by the self-employed);
- the right to receive the [National Minimum Wage](#); and
- may also be entitled to statutory sick pay and statutory maternity/paternity pay.

Uber B.V -v- Aslam & Others

The key deciding factor in this decision was the degree of subordination and control that Uber drivers were subjected to.

When passing judgment, Lord Leggatt stated that worker status was a question of statutory interpretation, rather than contractual interpretation.

This means that it does not matter what name the parties give to their working arrangement, it is the factual day-to-day practice of that arrangement which is the key to interpreting how the law will define it.

Lord Leggatt surmised that the legislation is there to protect vulnerable individuals who are in a position of subordination and dependence on another person who controls their work. And, therefore, where there is a greater degree of control, it is likely that the individual will be a worker, rather than self-employed.

The subordination and control exercised by Uber manifested itself in several ways.

1. the drivers' pay was fixed by Uber and the contractual terms under which drivers performed their services was also controlled by Uber. Flagging Uber drivers as workers, as the self-employed can set their own fees and contractual terms; and
2. once Uber drivers logged into the app, they had little choice in accepting rides. Uber could penalise drivers based on their trip cancellation rate, demonstrating the drivers' subordination to Uber.

The effect of this decision and the importance placed on the purpose of the legislation, demonstrates that the courts should look to protect workers, irrespective of any signed contractual documents.

This emphasises the Supreme Court's decision in [Autoclenz Limited v Belcher](#), where it made clear that tribunals should look at the substance of any contract and not just its form.

Many employers will state on an employment contract that an individual is self-employed for various reasons, however, the court will look at the actual relationship between the parties and the whole context of that relationship, not just the contract itself.

Employers would be wise to review the arrangements in place regarding their exposure to worker status claims and the financial consequences of a successful claim.

Speak to [Karen Cole](#) today who can review the reality of the working arrangement and what rights and protections will apply.

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Note: This is not legal advice; it is intended to provide information of general interest about current legal issues.

