Self-employed or employee? Legal classification of courier employment 3/3/24

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In today's fast-changing employment space, the status of workers has become a subject for legal, social and economic debate. Recent years have seen significant changes to the labour market and to the traditional perceptions of employment, in particular as a result of Covid-19.

Many countries have gone through heated debate about the classification of courier employment, with arguments focusing on whether couriers should be treated as normal employees or independent self-employed contractors. Tax experts have pointed out that differences in the tax treatment of employees and self-employed persons have incentivised several companies to take a low-cost approach and hire people on a self-employed basis.

This article explores a lawsuit filed in the UK looking for the answer to this question: Are couriers indeed employees?

Background

The Independent Workers' Union of Great Britain (IWGB) as claimant plays a key role in the UK Supreme Court's ruling against Deliveroo, a food delivery platform. IWGB is a trade union that organises a large number of couriers building a collective force to protect their interests. IWGB accused Deliveroo of denying their food delivery couriers basic labour rights.

The Supreme Court's ruling of 21 November 2023 upheld the Appeal Court's decision of June 2021 that Deliveroo couriers are self-employed. The Supreme Court ruled that couriers are not employees under article 11 of the European Convention on Human Rights.

Key findings

There are a number of criteria that differentiate employees from the self-employed. The Supreme Court listed the main facts showing that Deliveroo couriers are not employees:

- Deliveroo's contract with couriers gives them practically unlimited rights to appoint a substitute who would take on their courier work, which is inconsistent with an employment relationship.
- Deliveroo did not terminate the contract if a courier failed to meet their work conditions, for example, a set percentage of orders the courier was supposed to carry out.
- Deliveroo did not object to persons working for the company simultaneously working for its competitors. This is in breach of the condition that the contract should be between one entity and one individual as required by the Trade Union and Labour Relations (Consolidation) Act 1992.

Opinion is divided on how couriers should be classified in terms of employment. For example, the Belgian Labour Court ruled in December 2021 that Deliveroo couriers are not employees. In April 2022 a French court imprisoned the former Deliveroo management because they had misclassified employees as freelancers for tax purposes. The Dutch Supreme Court found on 24 March 2023 that Deliveroo couriers are employees.

The situation in Europe

Digital platforms, such as Wolt and Bolt Food, are widely used in Latvia, too. They are a truly significant part of today's economy. Platform employment is estimated to account for 20–70% of the employment sector in the coming decades. In the US, for example, 15–20% of all workers are employed in the digital platform business. In Europe, about 28 million people are employed in the digital platform business.

A new EU directive on employment is being proposed to determine whether the self-employed should be treated as employees. The proposals are making progress and there are plans for a procedure to determine whether someone is an employee, not a self-employed person. To recognise someone as an employee, at least two of the following criteria must be met:

- There are limits on the wages and salaries employees can earn.
- The entire work is monitored, including by electronic means.
- The delegation of work tasks is monitored.
- There is control over the working conditions and there are restrictions on the choice of working hours.
- There are restrictions on when employees can work, restrictions on their freedom to organise their work and time, and restrictions on the dress code and work ethics.

This will also affect the classification of individuals for tax purposes and the amount of tax due on their pay.

The Latvian Personal Income Tax (PIT) Act provides for reclassifying the self-employed as employees for tax purposes according to criteria listed in section 8(2.2):

- The taxpayer is economically dependent on the entity to which he provides services.
- The taxpayer does not assume any financial risk inherent in profitless work or bad debts.
- The taxpayer is integrated in the entity to which he provides services. "Integration" means the existence of a place of work/rest, the obligation to meet the entity's internal rules, and other similar characteristics.
- The taxpayer has actual holidays and vacations, and the way he can claim those is linked to the entity's internal working procedures or the work schedule of other people employed by the entity.
- The taxpayer's work takes place under another person's direction or control, and he is unable to use his own staff or subcontractors in doing his work.
- The taxpayer does not own the assets or materials used in business (this condition does not apply to his own car or certain private tools that are used to carry out his work).

Thus, Latvian law permits the self-employed to be classified as employees for tax purposes in doubtful cases. Yet this applies only to personal tax payments and social guarantees (national insurance contributions are paid in full for this person if they are reclassified), without affording any other protections prescribed by the Employment Act.

Takeaways

The self-employed are not receiving any of the social guarantees that employees are entitled to, nor protections prescribed by the Employment Act, such as paid leave. Still, many people choose a job where they can become self-employed to take advantage of flexible working hours coming with this status. For this and other reasons, the potential EU directive would be a step towards a more attractive regulatory framework securing not only flexibility but also social guarantees and better working conditions.