



Advice from Alan

Uber drivers are employees

by Alan Knowsley, consultant, Rainey Collins Lawyers

In a decision that is bound to have far-reaching implications for many business models that rely on 'contractors' rather than 'employees', the Supreme Court has held that Uber drivers are employees rather than independent contractors.

Uber drivers meet the definition of 'employee' under New Zealand law, as they are "employed by an employer to do any work for hire or reward under a contract of service" and the facts pointing to an employment relationship outweigh the contract specifying that they are contractors.

The Employment Court and Court of Appeal both held that Uber drivers are employees. Uber appealed this decision to the Supreme Court, claiming that it merely facilitated their drivers' abilities to form their own business relationships with their passengers. Uber also claimed that drivers use their own cars, and that fares are paid directly to drivers, with Uber deducting a service fee. These arguments were used by Uber to again claim that their drivers are contractors and not employees.

The Supreme Court found that Uber prohibits its drivers from subcontracting their work; goodwill from customers accrue to Uber as a company, rather than the drivers themselves; Uber's control over its drivers is far more than is ordinary for a contractor arrangement; Uber controls the prices charged for each ride; drivers have no way of contacting passengers to further any business relationship; and Uber's disciplinary procedures are consistent with an employment relationship.

These factors led the Supreme Court to determine that Uber drivers are employees. The decision opens the way for claims by drivers to minimum wages, holiday pay, sick leave, and all the other normal employee benefits, and these claims can be backdated many years. Other rideshare platforms and businesses that have 'contractors' (such as courier drivers) will have to scrutinise their own operations to determine whether they too are employers. It is likely that if they operate in the same way as Uber, they may have to adjust their operations so they don't breach any employment law obligations that they may have.