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New Uber Ruling by French Supreme Court: A Game Changer for the Gig Economy and Platform Workers?

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On March 4, 2020, the French Supreme Court ("the Court") rendered a new decision on the legal classification of the agreement existing between Uber and one of its drivers, in line with its previous ruling in the *Take Eat Easy* case (Ruling n°374 of March 4, 2020 – Appeal n° 19-13.316 and Ruling n°79 of November 28, 2018 – Appeal n° 17-20.079).

The Court has decided that the driver is in a subordinate relationship with Uber and, therefore, that the self-employed status of the driver is merely fictitious and that the professional relationship between Uber and its driver should be reclassified as an employment contract.

Following the Court, in accordance with its established case law, an employment contract is characterized by the performance of a job under the authority of an employer who has the power (i) to give orders and instructions, (ii) to supervise performance, and (iii) to sanction non-compliance with the instructions given. Additionally, according to the Court's case law, the existence of a subordinate relationship does not depend on the will expressed by the parties or on the title of the contract, but rather on the factual conditions under which the work is carried out.

In the case at hand, the Court applied the aforementioned criteria and stated in particular that:

- The driver joins a digital platform, entirely set-up and organized by Uber, under the terms and conditions set by Uber.
- The driver, who uses the Uber digital platform, does not build up his or her own clientele, does not freely set his or her fares and rates and does not determine the terms and conditions of the transportation service.
- The fact that the driver is not obliged to connect to the digital platform and that he or she is, consequently, able to choose the working days and working hours does not exclude *per se* an employment/subordinate relationship.
- Uber is able to sanction the driver by (temporarily or permanently) limiting or preventing access to the digital platform.

According to the Court, all these elements point towards the existence of a link of subordination between Uber and the driver.

Limited to France?

We expect that courts and tribunals – not only in France, but also in other EU member states – will increasingly be asked to assess whether self-employed platform workers can indeed be considered self-employed workers or whether they are in fact employees.

A number of similar rulings have already been rendered in the United Kingdom, the Netherlands, and Spain.

Although there is currently no decision from the Belgian Supreme Court on the employment status of platform workers, the public prosecutor attached to the Brussels Labor Court has – after a two year social inspection – recently launched a case against Deliveroo concerning the employment status of the riders, who Deliveroo considers self-employed workers.

While in Belgium, the general and predominant legal principle is that parties are free to determine the nature of their professional relationship, the court may set aside the classification chosen by the parties to the extent the factual performance of the contract is incompatible with such classification.

Similar to France, the existence of a link of subordination is the criterion that fundamentally distinguishes an employment relationship from a self-employed relationship. Based on abundant case law, the following four criteria are taken into consideration to determine the presence or absence of a relationship of subordination:

- The intention of the parties.
- The freedom to organize the work.
- The freedom to organize the working time.
- The existence of a hierarchical control.

For a number of industry sectors (such as the sector of transport of goods and passengers for third parties), there is a refutable presumption of being an employee when the majority of the nine specific economic and factual criteria are met.

With regard to the Deliveroo riders, it is worth noting that there have been a number of rulings by the Belgian Administrative Commission for the Determination of the Employment Relationship, where it was concluded – taking into consideration the above-mentioned criteria – that the Deliveroo riders should be considered as employees and not as self-employed workers. Although these rulings are not binding for a court or tribunal, the relevance remains important.

Conclusion

The ruling of the French Supreme Court does not only pave the way for other Uber drivers to claim the reclassification of their contractual relationship as an employment contract, but could also be considered a game changer for Uber's business model (not only in France, but also in other EU member states). The decision of France's highest Court could also impact other digital platforms, such as UberEats and Deliveroo, as their current business model seems to be conflicting with a subordinate employment relationship.

The further development and expansion of the gig economy throughout the EU will continue to question the traditional employment model(s) and could even indicate the need for a specific legal and social framework for platform workers.

Our Brussels Labor & Employment team will closely monitor any developments and changes in this field and keep you posted. Our team is also available to advise and assist companies active in the gig economy regarding all labor and employment law aspects.

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