#100 HR Newsletter
Feb 2017: The Gig Economy

Macnaughton McGregor
Training Learning Impact

Gig economy being challenged in the courts again.

A plumber who signed an agreement with his company suggesting that he was self-employed was in fact entitled to some worker rights, according to the Court of Appeal and was deemed to be "A Worker" instead.

The judgment has important implications for so-called "gig economy" employers that claim their workers undertake services on a self-employed basis and that they effectively run their own businesses.

Mr Smith worked as a plumber for Pimlico Plumbers from 2005 until 2011. The agreement between the company and Mr Smith described him as a "self-employed operative". The wording of the contract suggested that he was in business on his own account, providing a service to Pimlico Plumbers.

Mr Smith was required under the contract to wear **Pimlico's uniform** (which displayed the company's logo), **use a van leased from Pimlico** (with a GPS tracker and the company's logo), and **work a minimum number of weekly hours**.

However, he could choose when he worked and which jobs he took, was required to **provide his own tools and equipment**, and handled his **own tax and insurance**.

There was **no express term** in the agreement allowing Mr Smith to send someone else to do the work. However, there was evidence that plumbers could swap jobs, described as "**more akin to swapping a shift between workers" than substitution**.

Pimlico Plumbers did not guarantee to provide Mr Smith with a minimum number of hours.

Following the termination of this arrangement, Mr Smith brought claims for unfair dismissal and disability discrimination.

The employment tribunal found that he was a "worker", whereby an individual undertakes to do or perform personally any work or services for another party to the contract. (and not a self-employed contractor).

The Employment Appeal Tribunal (EAT) agreed with the employment tribunal, and the Court of Appeal has now dismissed Pimlico Plumbers' appeal.

In dismissing the appeal, the Court accepted that the original employment tribunal had been entitled to stand back and looked at the arrangement as a whole.

According to the Court, the employment tribunal had been right to regard Mr Smith as "an integral part of Pimlico Plumbers' operations and subordinate to Pimlico Plumbers".

The employment tribunal was entitled to regard Pimlico Plumbers as more than just a "client or customer of Mr Smith's business". Unlike recent high-profile judgments involving Uber drivers and CitySprint couriers, this ruling is binding on other courts and tribunals.

This means that the Court of Appeal decision in Pimlico Plumbers Ltd is likely to be a key authority in any forthcoming cases on employment status in the gig economy.

Glenn Hayes, an employment partner at Irwin Mitchell, said: "We are seeing increasing numbers of individuals challenging their status and claiming to be workers or employees.

"CitySprint couriers and Uber drivers recently persuaded separate tribunals that they were workers and although Uber is now appealing this, tribunals are clearly taking a pragmatic and bold approach to determining status cases, despite contractual arrangements which are designed to give the appearance that individuals are genuinely self-employed.

"The outcome of this case is very significant and could make it more difficult for Uber and others to persuade the courts that its drivers are genuinely self-employed."

Yvonne Gallagher, employment partner at law firm Harbottle & Lewis, said it was important to note that this case **did not find that the plumber was an employee of Pimlico Plumbers.**

"Those categorised as workers have a right to minimum wage and to paid annual leave, along with some other procedural rights, such as a right to be accompanied at any form of disciplinary meeting," she explained.