



News › Business › Business Comment

# Why Deliveroo could not stop couriers from taking it to court over workers' rights – even if it wanted to

Deliveroo couriers need to be considered as workers to have access to rights such as the national minimum wage and holiday pay

Matt Gingell | @MattGingell1 | Wednesday 27 July 2016 | [□](#)



Contracting out of employment statutory rights is generally prohibited. Clauses in contracts which therefore preclude statutory employment rights from being exercised are usually unenforceable.

So what about the clause reportedly included in contracts between Deliveroo, the restaurant delivery firm, and its riders which prevents the riders from bringing any claims if they wish to challenge their employment status? The clause would most likely be held to be unenforceable.

Deliveroo contracts with riders on a freelance basis. The Guardian has reported though that the contracts state that the riders are stopped from bringing claims if they wish to contend that they're in fact employees or workers.

The relevance of this is that even if there is documentation between parties outlining a self-employed arrangement the Courts will consider the reality of what happens in practice in determining the business relationship.

Employees and workers have certain rights such as an entitlement to the national minimum wage and paid annual leave. Employees also have additional rights such as the right to statutory sick pay and written particulars of employment.

For worker status, the individual must be obliged to provide work or services personally and there must be mutual obligation for the work to be provided as well as accepted.

For employee status, personal work or service and mutual obligation must be present but there also needs to be an element of control. Other factors are considered too.

The key thing is that if the clause in these contracts is enforceable it would prevent the riders from bringing claims relating to worker and employment rights.

The legal position is that statutory employment rights cannot be waived unless the waiver is done through a settlement agreement (signed by an independent adviser) or through ACAS.

Interestingly, another clause in the contracts allegedly states that if the riders choose to challenge their status they must “indemnify and keep indemnified Deliveroo against costs (including legal costs) and expenses that it incurs.”

This clause may well be void on public policy grounds. The argument would be that such a clause is contrary to the employment tribunal costs regime where, generally, each party pays their own costs.

In a commercial agreement the parties might be able to agree to such a term but the difference in bargaining positions between Deliveroo and its riders may make the Courts step in.

There may be a separate reason why the indemnity clause could be unenforceable. The indemnity could be seen as limiting the ability to exercise statutory employment rights by including a cost constraint. Although this argument is untested it may find favour with the Courts. The prohibition on contracting out of statutory rights could provide a reason to invalidate the clause.

It's unfortunate for Deliveroo that the issue of employment status is hot news at the moment.

Uber is currently **facing legal action over drivers' rights** to paid leave and the minimum wage. The employment tribunal will be determining the status of Uber's drivers.

The decision could have serious implications for similar operations and the **gig economy** in general.

*Matt Gingell is a partner at Gannons Solicitors, and specialises in employment law.*