QUICK LEGAL BITE FROM
THE DESK OF **DANNY ADNO**

# THE UBER CASE.

## EMPLOYEE OR CONTRACTOR?
## A TURNING POINT IN THE FUTURE OF THE GIG-ECONOMY.

A gig economy is an environment in which temporary positions are common and organisations commonly contract with independent workers for short-term engagements.

In a recent case the Fair Work Commission (FWC) rejected an application for unfair dismissal brought by a Victorian Uber driver[1] , and in doing so provided useful guidance, in the context of a gig economy, on the key distinguishing factors to be taken into consideration when assessing whether a worker is an employee or an independent contractor (the Uber Case).

Central to Uber's defence was a jurisdictional claim that its drivers are independent contractors as opposed to employees. The driver had signed an independent contractor agreement. Uber argued that it was no more than a technology platform operated via an App that facilitates transactions between two (2) parties, being the driver and the rider.

In assessing the worker's relationship with the company, the FWC adopted a multifactorial approach and held that following indicia pointed towards the existence of an independent contractor relationship.

| FACTOR | CONSIDERATIONS |
|---|---|
| Equipment | The driver supplied his own equipment e.g. his own car, phone, data plan |
| Control | The driver could perform any other work as and when he wished. He exercised complete control over the hours he worked, and he was able to reject or accept trips. |
| Tax | The driver was responsible for dealing with the ATO directly in relation to registering for GST and all other tax liabilities. |
| Uniform | The driver was not permitted to display any Uber names, logo or wear any branded uniform (It is noted that in New South Wales, Uber currently requires its drivers to display branded Uber window stickers.) |
| Payment | The driver paid Uber a 'service fee', and was not paid by Uber. |
| Entitlements | The driver was not paid any leave or statutory superannuation entitlements. |

Although Uber had a service agreement in place with its drivers, explicitly excluding the existence of any "employment" relationship, and confirming the nature of the relationship as that of independent contractor, it was noted that parties cannot alter the true and genuine nature of the relationship by merely categorizing the relationship as that of an independent contractor.

**What does this decision mean for workers in the gig economy?**

There are many new digital platforms popping up with similar engagement strategies. This decision has the potential to mean that the primary workforce of these Apps is almost genuinely comprised of independent contractors and that the entire work force in the gig-economy sector are missing out on the statutory safeguards provided by the employer-employee relationship.

**What does this decision mean for employers? Can they just contract out of their employer obligations?**

Danny will discuss these issues in his next legal bite.

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[1] Michael Kaseris v Rasier Pacific V.O.F [2017] FWC 6610

## CONTACT DANNY

Danny is a highly motivated, experienced and strategic commercial lawyer.
He has strong technical and interpersonal skills and is solutions focused.



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