
A Newsletter on Labour Law and Emerging Trends



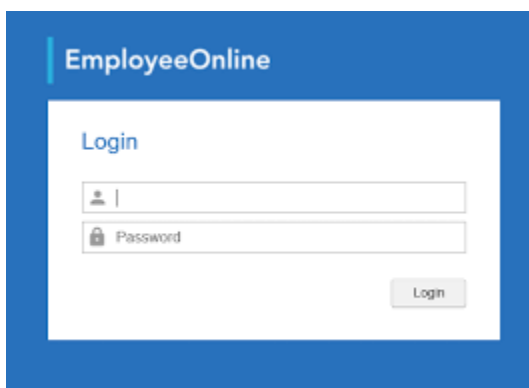
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THE STATUS OF THE MODERN WORKER - WHO IS MY EMPLOYER?

Decades of breath-taking technological evolutions have produced complex structures that have transformed/disrupted the world of work. These innovations have introduced novel employment arrangements, which are increasingly dynamic and somewhat independent; but at the same time present challenges, particularly with respect to the categorization of “virtual” or “technology assisted” relationships. Admittedly, these age-old arrangements had allowed principals avoid certain obligations such as pension contributions, insurance, gratuity, amongst others. It is therefore not surprising that in the wake of modern awakening in different parts of the world, workers, such as ridesharing drivers, have engaged in fierce judicial struggles to be ‘properly’ classified.

Before now, the traditional work place largely entailed the execution of a paper-based contract, physical presence of the employee, and most importantly, a clear classification and structure of the employment relationship. A worker engaged as an administrative officer, for instance, was aware of the identity of his/her employer, as well as the employer’s contractual and/or statutory obligations to him/her. However, decades of breath-taking technological evolutions have produced complex structures that have transformed/disrupted the world of work. The introduction of Artificial Intelligence (AI) has changed the work place structure as we understand it, and introduced novel employment arrangements, which are increasingly dynamic, employer-remote and somewhat independent.

TECHNOLOGY DISRUPTION



Owing to the rapid development of technology, the modern workforce is becoming increasingly flexible, readily available on digital platforms, with assigned tasks easily executed from anywhere. Today, organizations, through digital platforms, can seamlessly engage workers from a pool of potentials, available to execute different administrative and even technical functions. Usually, these platforms are guided by a seemingly unilateral contract in the form of Terms and Conditions. These Terms and Conditions are, in most cases, accepted by a mere ‘click’, with little or no regard for the content. More often than none, these Terms and Conditions do not adequately capture the relationship of the parties; this does not, however, affect the binding nature of same, directly or in terms implied by the court.

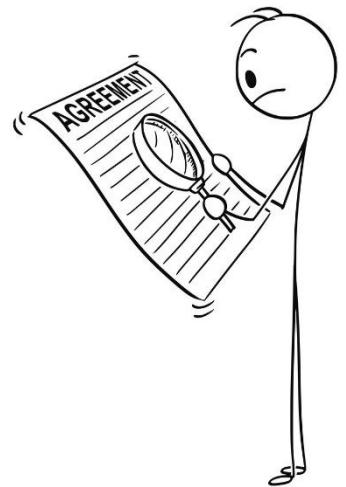
It suffices to say that these innovations are not without their challenges, particularly with respect to the categorization of “virtual” or “technology assisted” relationships. The absence of a proper classification raises the question as to whether such engagements constitute employment relationships or independent contracts. Admittedly, some of these unclassified arrangements have allowed principals avoid certain obligations such as

pension contributions. It is therefore not surprising that, in the face of modern awakening, workers have engaged in fierce judicial struggles to be ‘properly’ classified. An example is the case of *Oladapo Olatunji & Anor (Representing themselves and other Uber and Taxify Drivers in Nigeria in a Class Action) V. Uber Technologies System Nigeria Limited & 2 Ors.*¹, wherein the Claimants sought, amongst other things, for a declaration that all Uber/Taxify drivers were employees of Uber/Taxify and as such, entitled to certain employee benefits. They contended that they were engaged subject to certain conditions (vehicle standards and maintenance, charges per trip, code of conduct, etc.), and work was periodically assigned for which they were paid ‘weekly wages’. While the Court dismissed the case largely as a result of the Claimant’s failure to provide sufficient facts and evidence to inform a substantive determination, a hint was made as to the relevance of Section 91(1) of the Labour Act in the determination of the status of an employee/contractor.

The type of relationship created through the Uber App is a typical example of the various modern/outsourced relationships for which many workers now seek clear classification of their employment status. This is relatable to the multiple apps in the market today, through which cleaners, lesson teachers, admin staff, etc. are ‘hired’; which of the parties, between the platform provider and the end-user, would be liable for the statutory/contractual obligations arising from the engagement of workers through such digital platforms? Is the contract to personally execute the work between the owner of the digital platform and the worker, or between the worker and the end-user? Interestingly, the UK Employment Appeal Tribunal in *UBER B.V v Aslam* (albeit merely persuasive) recently held that there was indeed “*a contract between Uber and the drivers whereby the drivers personally undertook work for Uber as part of its business of providing transportation services to passengers in the London area*”; the UK Court of Appeal held that the contract between Uber and its drivers did not reflect the reality of their relationship.

CONCLUSION

It is hoped that, once another opportunity presents itself, the National Industrial Court would clearly define the status of the modern employee, especially with respect to the unique arrangements in the face of evolving technology. While we wait for such a clear-cut direction, it is important for parties to ensure guiding documentation is clearly defined, which aptly states the status of each party and the actual nature of the relationship, including risks and liabilities. This is especially because, whilst the court is obligated to respect the sanctity of agreements, it may disregard the written contract and determine the relationship based on the facts if, in its opinion, the written terms do not reflect the reality of the relationship.



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¹ Discussed in more detail in our December 2018 Newsletter on Labour Law and Emerging Trends.