

News

Cautious welcome for plans to overhaul gig economy workers' rights

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Government leak suggests new legislation will also end 'Swedish derogation' rules affecting agency workers



Gig economy workers could see their employment status aligned with their tax status under wide-ranging potential legislation which aims to target 'one-sided flexibility' and end a string of challenges from individuals and trade unions.

Leaked plans **revealed in *The Guardian* last week** suggest the government plans to act on a number of the 53 recommendations made by the July 2017 Taylor Review into modern working practices.

In April, the government unveiled a **detailed series of actions to protect workers' rights** but experts at the time said it was a 'missed opportunity' for wider reform.

Under the latest proposals, new legislation could potentially clarify what determines self-employed status by aligning tax and employment law, ensuring gig economy workers receive better worker protection.

Ian Brinkley, acting chief economist at the CIPD, said the leaked plans struck a "fairly reasonable balance" with the measures being relatively straightforward for employers to implement and gig economy workers benefiting from "modest improvements" in conditions.

The government has been under growing pressure to **bring outdated employment status law into line** with modern working practices, particularly as growing numbers of tribunals are finding workers are wrongly defined as self-employed and are entitled to workers' rights.

Siobhan Howard-Palmer, employment associate at HRC Law, said: "The gig economy is a reflection of how times are changing and the legal position has not kept up. This situation magnifies the ongoing challenges around having an up to date, relevant and fair definition of employment status."

But Stephen Levinson, employment lawyer at Keystone Law, said the proposals did not go far enough. "If the UK government is serious about tackling the artificiality of some 'self-employed' relationships, they must remove the incentive to artificiality created by the national insurance rates," he said. "This was identified in the Taylor Review, but serious progress will not be made until that changes. Tinkering with the legal definition of employment will just provide increased income for lawyers."

Workers would also be granted the right to request temporary or fixed-hour contracts after 12 months of employment under the proposals, while specific terms of employment such as notice periods and cancelled shifts will be looked at to address what the Taylor Review previously described as 'one-sided flexibility'.

There could also be a crackdown on employers paying agency workers less than full-time staff for performing the same role, a legal loophole known as Swedish derogation.

Under the Agency Worker Regulations 2010, agency workers employed for 12 weeks or more are entitled to the same pay and benefits as permanent staff. But Swedish derogation – so-called because it was added to the legislation at the request of Swedish lawmakers – allows for exceptions whereby temps can be employed by the agency directly rather than the client company. Critics have argued the loophole allows companies to create a two-tier workforce, though supporters of the rule say it is vital to create flexible workforces, for example among seasonal workers.

Paul Kelly, partner and head of employment at Blacks Solicitors, welcomed the proposals, which attempt to update UK law to face the 'unique challenges' of the gig economy. But he warned a one-size-fits-all approach to employment status would be difficult to implement in practice.

"Numerous industries and professions engage with the gig economy on a daily basis and all have differing working practices. What works in the transport sector may not translate to hospitality or professional services," said Kelly. "Regardless of sector, whatever proposals are eventually put in place need to occupy the middle ground. Too much regulation and the gig economy will die; too little and exploitative practices will continue unchecked."

The leaked proposals follow a protest march of gig economy workers and those in low-paid, 'precarious' work at the end of October, which marked the beginning of Uber's hearing at the Court of Appeal. The hearing is the firm's latest attempt to overturn a 2016 Employment Tribunal ruling which found that Uber drivers were entitled to workers' rights.

Mike Cherry, national chairman of the Federation of Small Businesses (FSB), said his members could be hit disproportionately by the proposed changes. "The flexibility of the UK's labour market is essential to driving job creation and economic growth – it should provide choice and flexibility for both employee and employer alike," he said.

"The issue of one-sided flexibility is best addressed through advice, guidance and support. It's important to remember that small businesses do not have teams of HR specialists, so hitting them with reams of new legislation opens the door to employers making inadvertent mistakes.

"We need to stamp out false self-employment but we definitely can't have the genuinely self-employed disadvantaged in the process. We need to see this government do more to help rather than hinder the 4.8