

UnionLine NEWS

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The Legal Services Newsletter for GMB and CWU Members and their Families



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UBER BRAND TURNS TOXIC

EXPLOITATION OF WORKERS, FAILING TO ABIDE BY REGULATIONS IN LONDON, COVER UP OF A MAJOR DATA BREACH AND SEXUAL HARASSMENT CLAIMS...

are just some of the features of the past year for beleaguered car hire company Uber.

In the UK, the future of the car hire company has come under threat, as TFL refused to renew its license to operate in the capital. Uber were accused of a number of irregularities, including its approach to reporting serious criminal offences, its approach to how medical certificates are obtained and use of blocking software, stopping regulatory authorities getting full access to the app.

The company has begun an appeal in the courts.

Other towns are looking closely at what is happening in London, Sheffield and York and the operation of the company, with Brighton and Cambridge amongst those also reviewing operations.

The company has also been seeking to defend its position as a main player in the gig economy. This has involved claiming that its drivers are self-employed, so not entitled to things like holidays and sick pay.

A tribunal ruled in favour of two drivers supported by the GMB, who claimed that they were effectively employees of the company. The company appealed the key tribunal ruling on worker's rights but lost again in November. Uber then announced a further appeal and applied to 'leapfrog' the Court of Appeal and go straight to the Supreme Court, something which is rarely granted albeit for extremely important cases. Having been refused

permission to leapfrog, the appeal will now be heard by the Court of Appeal sometime in 2018.

There was more damaging news from the US, where Uber have been embroiled in revelations of a data breach and sexual harassment claims.

Uber admitted that it had failed to disclose a cyber-attack that exposed the data of some 57 million drivers and passengers. The breach affected 2.7 million individuals in the UK. The company then paid the hackers £75,000 not to release the stolen data.

The UK Information Commissioner's Office said that Uber's admission over the hack **"raises huge concerns around its data protection policies and ethics."**

Also in the US, former Uber engineer, Susan Fowler alleged in a blog that she was sexually harassed and experienced gender bias during her time at the company. She claimed that one manager propositioned her and asked for sex, but her complaints to HR were dismissed because the manager was a high performer. She said Uber continued to ignore her complaints to HR, and then her manager threatened to fire her for reporting things to HR. The New York Times then published further details of other abuses involving sexual harassment and drug use.

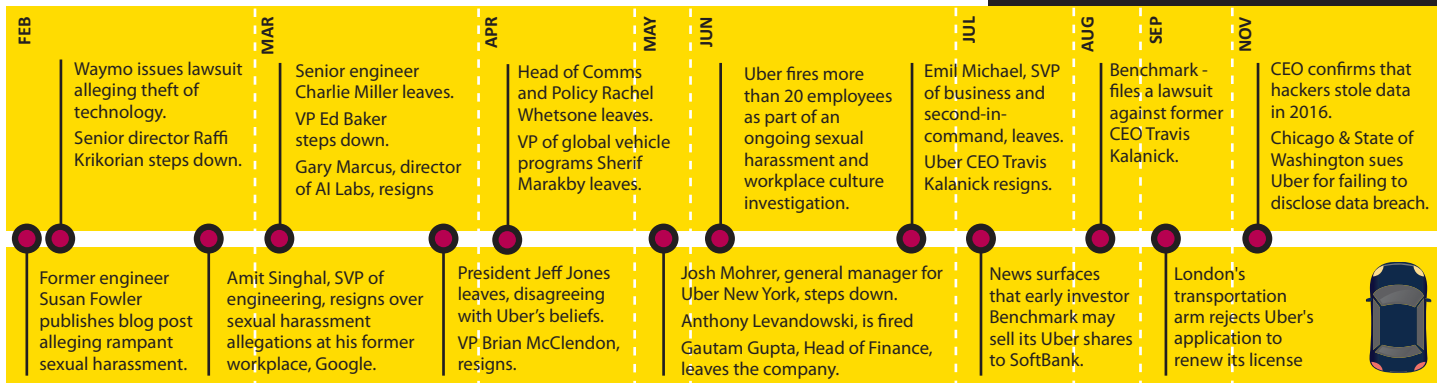
The company hired Eric Holder, former US attorney general, to lead an independent investigation, which saw more revelations and eventually 20 staff were fired.

In June, CEO and company founder Travis Kalanick stood down. Further problems saw the Google self-driving-car group, now known as Waymo, accuse Uber of using stolen technology to advance its own autonomous-car development. The law suit, filed in the US District Court in San Francisco, claimed that a team of ex-Google engineers stole the company's design for the lidar laser sensor that allows self-driving cars to map the environment around them.

So it has truly been an "Annus Horribilis" for the car hire company, with its global reputation in the tatters. The new management will certainly have their work cut out, not least the way it treats its workers, if next year doesn't prove to be worse than this year.



UBER thought it!.. timeline of main features



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What do zero hours workers want



The vast majority of workers on zero hours contracts are not on them by choice, a new TUC poll has revealed...

The poll shows that two-thirds (66 per cent) of zero hours workers would rather have a contract with guaranteed hours. One in four zero hours workers (25 per cent) say they prefer them. The survey shows that the main reason people are on these contracts is because it is the only type of work available to them. More than half of zero hours workers (53 per cent) are thinking about quitting their job over the coming year. The polling found that many zero hours workers are missing out on basic rights at work, with only 1 in 8 (12 per cent) saying they get sick pay. Over two-fifths (43 per cent) say they don't get holiday pay and just 1 in 20 (5 per cent) say they have the right to a permanent contract after working the same hours consistently. More than half (51 per cent) of zero hours workers have had shifts cancelled at less than 24 hours' notice. And nearly three quarters (73 per cent) have been offered work at less than 24 hours' notice.

The TUC says the government should clamp down on zero hours working in its forthcoming response to the Taylor Review. TUC general secretary Frances O'Grady said:

"Most people on zero hours contracts are not on them by choice. They'd much rather have the security of guaranteed hours and the same rights as employees."

She added: *"Now's the time for the government to ban zero hours contracts, as they have done in other countries like New Zealand. Every job should be a great job – but far too many workers in the UK are being treated like disposable labour."*

HOLIDAY PAY RULING COULD BE A "GAME CHANGER"

If a worker does not take paid annual holiday, due to an employer refusing to pay, can the worker then carry over paid holiday or is it forever lost at the end of each holiday year?

In a recent European Court of Justice (ECJ) ruling that is being labelled as "game changing" for workers in the 'gig economy', the ECJ decided the case of King v Sash Window was owed a full 13 years' worth of annual leave pay.

Mr King was misclassified as self-employed, his 'employer' did not give him paid holiday. The ECJ ruled he was a worker and therefore entitled to 5.6 weeks' paid annual leave.



The ECJ stated: "In the absence of any national statutory provision establishing a limit to the carryover of leave in accordance with the requirements of EU law, to accept that the worker's acquired entitlement to paid annual leave could be extinguished would amount to validating conduct by which an employer was unjustly enriched to the detriment of the purpose of that directive, which is that there should be due regard for workers' health."

The employer argued that the Working Time Regulations 1998 states that if paid holiday is not taken in a leave year, then it is lost. The ECJ held that an employer who fails to grant paid holiday to workers should not be entitled to the benefits of the normal limits on how much

can be carried over and any backpay claim can go all the way back to 1996, when the original Working Time Directive came into force.

The consequences on employers whose 'self-employed' contractors turn out to be classified as 'workers' may find themselves facing very substantial holiday pay bills, dating back 20 years due to the 4 week EU holiday pay ceiling rather than 5.6 weeks in the UK, a potential bill of 20 years x 4 weeks = 80 weeks' pay per worker.

Maria Ludkin, GMB Director of Legal Services & UnionLine Executive Board Member said;

"The ECJ ruling could have far reaching financial penalties for gig economy employers whose reputations of bad employment practises belong to a bygone era best forgotten."

Gig economy workers wrongly misclassified as self-employed who've questioned their employment status, could be in-line for substantial backpay of unpaid holiday."

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