

UnionLine NEWS

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



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Taxi for Uber!!!



GMB, as reported in last month's UnionLine News, has won its groundbreaking case as the London Employment Tribunal has determined that Uber has acted unlawfully by not providing drivers with basic workers' rights.

The GMB brought two test cases to the Central London Employment Tribunal on 20 July 2016 and it has decided that Uber drivers are entitled to receive holiday pay, a guaranteed minimum wage and an entitlement to breaks.

This is a ground-breaking decision. It will impact not just on the tens of thousands of Uber drivers working across in this country, but on all workers in the so-called gig economy whose employers wrongly classify them as self-employed and deny them the rights to which they are entitled.

GMB found last year that a member working exclusively for Uber received just £5.03 per hour in August after costs and fees were taken into account, significantly below the national minimum wage of £7.20. Lawyers for the drivers also argued that Uber acts unlawfully by frequently deducting sums from drivers' pay, often without informing the drivers in advance, including when customers make complaints.

Maria Ludkin, GMB Legal Director, said: "This is a monumental victory that will have a hugely positive impact on over 30,000 drivers in London and across England and Wales and for thousands more in other industries

where bogus self-employment is rife.

Uber drivers and other directed workers do have legal rights at work. The question for them now is how those rights are enforced in practice. The clear answer is that the workforce must combine into the GMB union to force the company to recognise these rights and to negotiate fair terms and conditions for the drivers.

This loophole that has allowed unscrupulous employers to avoid employment rights, sick pay and minimum wage for their staff and costing the government millions in lost tax revenue will now be closed.

Uber drivers and thousands of others caught in the bogus self-employment trap will now enjoy the same rights as employees. This outcome will be good for passengers too. Properly rewarded drivers are the same side of the coin as drivers who are properly licensed and driving well maintained and insured vehicles.

GMB will give evidence to the new Taylor review on terms and conditions within the sectors of the economy offering precarious employment. We will make the case that average hours worked over the past 12 weeks should be deemed to be the contracted hours of work for those on zero hours as it already is for maximum hours of work under the Working Time Directive."

Nigel Mackay, Leigh Day employment lawyer, said: "We are delighted that the Employment Tribunal has found in favour of our clients.

"Uber drivers often work very long hours just to earn enough to cover their basic living costs. It is the work carried out by these drivers that has allowed Uber to become the multi-billion-dollar global corporation it is."

GMB Demands Meeting With Asda Top Brass As Equal Pay Victory Hits Headlines

ASDA

GMB, the recognised trade union representing ASDA workers, has today demanded an urgent meeting with senior bosses at the company after the landmark legal ruling on equal pay. On Friday 14 October an Employment Tribunal ruled – in the largest ever private sector equal pay claim – that ASDA shop workers could be compared to those working in distribution. The majority of shop floor workers are women, the majority in distribution are men.

The litigation, which has been run by legal firm Leigh Day, includes a number of GMB members and had been a major area of negotiation between the union and the employer in recent years.

GMB has now called on ASDA to act urgently or risk further challenges from the union.

Tim Roache, GMB General Secretary, said: "ASDA needs to act now. Over the last three years the GMB has repeatedly brought the issue of equal pay to the negotiating table with ASDA bosses, this legal ruling shows we were right to do so and that action needs to be taken immediately."

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Lock v British Gas – where do we go from here?

The Court of Appeal has confirmed that employers will have to pay commission as part of holiday pay.

During the four weeks annual leave under the Working Time Directive (WTD) an employee is entitled to receive “normal remuneration”. “Normal remuneration” should include anything intrinsically linked to the work performed by the employee under their contract of employment.

In this case, Mr Lock brought a complaint of unlawful deduction of wages in the form of unpaid holiday pay. As well as receiving a basic salary, Mr Lock was also participated in his employer’s commission scheme which was designed “to provide an incentive to encourage and reward individual performance”. Put simply, this pay structure meant that Mr Lock did not generate any commission during his annual leave. Consequently, he was paid reduced remuneration for the period after he returned from his holiday which, he argued, was a disincentive for him to take leave.

Mr Lock brought a Tribunal claim and his case was referred to the European Court of Justice (ECJ) to gain clarity between holiday pay and commission, where commission is paid on a regular basis. The ECJ held that the holiday



pay of workers like Mr Lock should not be calculated based on basic salary alone, but should also include an amount that reflects the commission element of his pay.

The requirements of the WTD are that a worker receives ‘normal remuneration’ during their four weeks leave.

The case then reverted back to the Tribunal to decide, on the facts, whether British Gas had adequately factored in commission payments when calculating Mr Lock’s holiday pay. In order to comply with the ECJ ruling the Tribunal held that the following words should be added to the Working Time Regulations to bring them in line with the WTD “...a worker with normal working hours whose remuneration includes commission or similar payment shall be deemed to have remuneration which varies with the amount of work done for the purposes of section 221.” In other words commission should form part of ‘normal pay’ and must be factored in when calculating holiday pay.

This latest decision on commission payments, and other recent decisions on the inclusion of voluntary overtime in holiday pay, may provide an opportunity for businesses to call again for future changes to the Working Time Regulations post Brexit.

If you have a question on the Working Time Directive, give our free legal advice helpline a call on 0300 333 0303.

Shared parental pay and discrimination



New laws on shared parental leave and pay were introduced in early 2015 meaning big changes for families and for businesses. In simple terms, the legislation gives mothers the right to transfer leave they’re due after the birth of their child, to their partner.

In the first case dealing with the issue of shared parental pay the Glasgow Employment Tribunal has awarded nearly £30,000 to a father who was discriminated against by his employer. The terms of the employer’s family friendly policy were deemed to be indirectly discriminatory when a father applying for leave was only entitled to statutory shared parental pay, whereas mothers received full pay during their shared parental leave. Whilst Tribunal decisions are not binding it is a useful indication of how this issue might be approached.

If you feel you have been discriminated at work, give our free legal helpline a call on 0300 333 0303

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