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# Legal *bitesize*

BECAUSE RECRUITMENT MATTERS

## GIG ECONOMY CASE: POTENTIAL IMPACT FOR RECRUITERS

The Independent Workers Union of Great Britain is supporting an employment tribunal claim that could have an impact on recruiters who supply temporary workers.

### Gig economy case

As we have been reporting, there are a number of high profile cases which are putting the spotlight on the 'gig economy'. This industry is characterised by work that is distributed as individual tasks, or 'gigs', and carried out typically by individuals who work on a self-employed basis.

Many of the cases we have seen involve individuals arguing that they are not self-employed and that they are either workers or employees with an entitlement to certain employment rights such as holiday pay and National Minimum/Living Wage. These cases have not vastly impacted on recruiters.

However, just last month the Independent Workers Union of Great Britain announced that it is seeking to support a cycle courier in an employment tribunal claim against courier company City Sprint.

In a case that could have an impact for recruiters who supply temporary workers, the cycle courier is arguing that the Transfer of Undertakings (Protection of Employment) Regulations 2006

The TUPE provisions benefit employees in allowing them to transfer their employment and retain the same terms and conditions.



(TUPE) apply to workers as well as employees and that as he is a worker rather than a self-employed contractor, the provisions should apply to him.

TUPE protects the rights of employees when the business they work for is transferred. It also covers other situations when a client outsources services or brings an outsourced services in-house, and also where a client changes contractors who have been providing an outsourced service. The latter category is particularly relevant to recruiters because the regulations potentially apply when they take over a contract to supply temporary workers to a client from another recruiter or lose a contract to another recruiter.

The TUPE provisions benefit employees in allowing them to transfer their employment from the outgoing business to the incoming business and to retain the same terms and conditions they were engaged under. There are also obligations on both the incoming business and the outgoing business to consult with the affected employees, with significant penalties for failure to do so.

The TUPE definition of 'employee' on the face of it excludes anyone engaged on a contract for services (the more common type of contract used for temporary workers), but applies to anyone engaged on contract of employment, apprenticeship

or **otherwise**. The latter words ('or otherwise') potentially hold the door open for workers to be in scope, with the contract for services exclusion only actually applying to individuals who are truly in business of their own account. Up until now the definition has not been tested as far as we are aware.

If the definition does extend to workers, recruiters will need to consider the regulations whenever they take over a contract to supply staff. Presently it only comes up from time to time because the majority of temporary workers are not engaged on

employment contracts.

As with all disputes it is possible that it could be resolved with no hearing, but this is an example of another challenge seeking to extend rights to gig economy workers and clarify their status, which could have ramifications for recruiters.

We will keep members updated with any developments regarding this case.

## TALKING POINT...

### The General Election

As we all now know the General Election, held on 8 June 2017, resulted in a hung parliament.

What does this mean legally and what are the next steps?

A hung parliament means that no party won enough seats to have overall control. The Conservatives remain the party with the most MPs but have lost their majority. Minority governments have significant difficulty in passing legislation without support of MPs from other parties.



Theresa May continues to be the leader of the Conservatives and Prime Minister for the present, and the Conservatives continue to be the Government. However the first test for the party and its leader will be to present the Queen's speech to parliament. This sets out the party's legislative programme. However without a majority, there will be little chance of the speech being passed, resulting in a vote of no confidence for the Government.

At the time of writing the Prime Minister is seeking to reach an arrangement with the Northern Irish Democratic Union Party (DUP) to provide some form of support to the Conservatives. The support of the DUP's 10 MPs would give the Conservatives the majority it needs to pass legislation.

The speech, which would ordinarily have been delivered on 19 June has now been delayed.

Challenges ahead include the possibility of Theresa May facing a leadership challenge, the start of Brexit talks with the EU which are scheduled to start on 19 June and the possibility of a further general election if either the Conservatives are unable to form a government or if a motion of no confidence in the government is passed.

See our [latest blog on the post election fall out](#).

**This publication is not a substitute for detailed advice on related matters and issues that arise and should not be taken as providing legal advice on any of the topics discussed.**

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