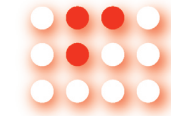


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Investigation into grey area of self-employment

News of an investigation by HM Revenue and Customs (HMRC) into pay rates for delivery drivers at courier company Hermes means a spotlight will be shone on the grey area surrounding employment status and statutory minimum wage rates.

The company is facing an investigation into allegations that it pays drivers less than the National Living Wage, by classifying them as self-employed rather than employees.

It has also been claimed that drivers do not receive benefits, such as a holiday allowance or sick pay, and risk losing their jobs if they are unable to come to work for any reason.

The allegations echo recent media coverage of delivery company Deliveroo, and a case involving a number of cycle courier businesses that is expected to be heard at an employment tribunal shortly.

In addition, a ruling is awaited in an employment tribunal case involving 19 drivers working for the taxi-hailing app Uber over their employment status.

But HMRC's intervention in the issue of self-employment has been seen as particularly significant.

The investigation into Hermes coincides with a separate announcement from HMRC that it would scrutinise employment arrangements relating to freelance workers who were being used to fill what would otherwise have been permanent roles.

www.cipd.co.uk/pm/peoplemanagement/b/weblog/archive/2016/10/21/hermes-case-highlights-need-for-organisations-to-review-employment-status.aspx

Government U-turn on safety appointment

The government will be advertising a new seat for a worker's representative on the Health and Safety Executive board, says TUC health and safety officer Hugh Robertson.

The government caused an uproar in September when it appointed an employer to represent workers on the HSE board. This, says Robertson on the Stronger Unions blog, totally undermined the principle of an equal voice for employers and workers on the board that is enshrined in the 1974 *Health and Safety at Work etc Act*.

That decision was widely condemned and there was even an emergency motion at TUC Congress.

After a meeting with TUC general secretary Frances O'Grady, work and pensions secretary Damian Green has now said that he will be advertising a

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new seat for a workers representative, and will “welcome the active engagement” of the TUC in the recruitment process.

Nevertheless, Robertson said of the U-turn: “It does not change the fact that the original appointment of an employer to represent workers interests should never have been made and, at the time, it showed that the government just does not understand the importance of unions, or worker involvement.

“So, while this is a very welcome move, it has to be only the start of the process of getting back to allowing unions to do the job they are there to do which is represent and support workers. That means that the government and HSE have to ensure that we have proper joint structures that allow us to do that.”

<http://strongerunions.org/2016/10/25/welcome-u-turn-on-hse-board/>

Low pay in the UK 2016

There were an estimated 362,000 jobs with pay of less than the National Minimum Wage (NMW) or National Living Wage (NLW) held by employees aged 16 and over in April 2016, which constituted 1.3% of UK employee jobs, official figures show.

A breakdown of jobs shows there were 178,000 jobs held by full-time employees with pay less than the minimum wages and 184,000 part-time jobs.

Jobs held by women were more likely to be paid less than the minimum wages than jobs held by men – 1.7% compared with 1.0% for men in 2016. This is consistent with the fact that a greater proportion of women work part-time than men, the Office for National Statistics said.

Almost a third (30%) of the 362,000 low-paid jobs – or 109,000 people – worked in elementary occupations, such as bar staff, waiters and waitresses, farm workers and cleaners. A further 61,000 – or 17% of the total – were in caring, leisure and other service occupations.

TUC general secretary Frances O’Grady said the figures were “very worrying” and called on chancellor of the exchequer Phillip Hammond to use next month’s Autumn Statement to beef-up minimum wage enforcement.

“There should be no hiding place for bosses who try to cheat their workers out of fair day’s pay. Failing to pay the minimum wage squeezes those who have the least.”

As it is, the TUC the figures should not be taken as a complete measure of minimum wage underpayment. The figures are an understatement as they exclude many of the common minimum wage scams, such as bogus self-employment, volunteering and internships. They also do not cover the underreporting of hours worked in sectors like social care.

Meanwhile, the ONS said the new figures could not be compared with previous estimates. The National Living Wage, essential a statutory minimum wage for workers aged 25 and over, was only introduced on 1 April but some employers did not implement the new NLW on 1 April for employees whose pay period began before 1 April. This is because, legally, employers did not need to implement it until the first full pay period following its introduction.

www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworking-hours/bulletins/lowpay/apr2016

www.tuc.org.uk/economic-issues/tuc-worried-rise-number-people-paid-below-minimum-wage

Self-employment or precarious work?

The typical earnings of the average self-employed person are lower than 20 years ago, according to the Resolution Foundation think tank.

The dramatic shift in self-employment over the last two decades – including the decline in full-time work and the falling share of self-employed business owners who have staff of their own – has been a critical factor in a 20-year stagnation in typical earnings, according to a the Resolution Foundation’s latest *Earnings outlook*.

Self-employment is in the spotlight as people question whether the recent growth in the workforce represents a new wave of entrepreneurship and a desire for flexible working, or a tool for businesses to hold down pay and restrict workers’ rights.

The report shows that typical weekly earnings for self-employed workers grew steadily in the late-1990s and early-2000s, stagnated in the run-up to the 2008 crash and then fell by a quarter in the wake of the financial crisis.

The recovery in earnings over the last year means that they are almost back to levels last seen in the late 1990s at around £240 a week, though this is still 15% down on 1994-95.

The Foundation notes that these earnings figures over a 20-year period relate to a very different pop-

ulation of self-employed workers, with the change in the make-up of the group over time going some way to explaining why earnings have fallen.

And since 2001-02, while self-employment has grown 45%, earnings of the group have fallen by around £60 a week over the same period.

Since the financial crisis, self-employed returns have been falling even on a like-for-like basis. Typical earnings fell by £100 a week between 2006-07 and 2013-14, with the vast majority of this squeeze arising even after holding constant the characteristics of the self-employed group.

The foundation says that while the analysis shows a fall in the number of self-employed owners with staff, it doesn't necessarily hold that the rest of the group are "working for themselves". It notes that some self-employed workers still consider themselves to be "managed", either by large employers or even by a smartphone app if they work in the gig economy.

Adam Corlett, economic analyst at the Resolution Foundation, said: "For many people, self-employment brings a freedom that no employer can provide. But the growth of low pay and short hours, along with a summer of protest about conditions, means that it's no surprise some workers in the 'gig economy' feel that self-employment is just a positive spin on precarious work."

www.resolutionfoundation.org/publications/the-rf-earnings-outlook-q2-2016/

Bullying a worrying problem in NHS

Bullying is a pernicious problem in the NHS. That's the stark finding of research by the *Guardian*.

An online survey of more than 1,500 doctors, nurses and other health workers in hospitals, primary care and community settings, found that eight out of 10 (81%) had experienced bullying and for almost half of them (44%), it is still ongoing. And close to nine out of 10 bullying victims who responded have been left with their cases unresolved.

Although the survey on bullying was self-selecting, the findings underline the results of the official annual NHS staff survey. The 2015 survey of nearly 300,000 healthcare professionals across England found that a quarter of staff in NHS trusts had experienced bullying, harassment or abuse in the previous 12 months.

Some 87% of respondents to the *Guardian* survey, carried out between August and September, think bullying is a big problem within the NHS, while almost three-quarters said they felt the health service did not take bullying seriously.

"The culture is driven by exerting undue pressure on others to get things done. If you don't, you are targeted and eventually you end up with stress and depression," one NHS manager said.

The impact of bullying is all too apparent. A third of victims said they had been pushed out of their jobs, with many developing serious mental health problems as a result, while almost three-quarters reported increased stress and panic attacks. As a result, some 41% said they needed counselling or treatment after being bullied.

Dr Anthea Mowat, chair of the British Medical Association's representative body, said the survey results should act as an urgent wake-up call to employers.

"If more staff are to speak out, they must be able to raise concerns without fear of being harassed or victimised, and there need to be clear and supportive systems of reporting in place," she said. "We need to put an end to the climate of fear that has built up in the NHS over a number of years, with those in senior positions in the NHS leading by example to make this a reality."

www.theguardian.com/society/2016/oct/26/nhs-staff-bullying-culture-guardian-survey

It may not be marriage guidance but it's helpful

Employment relations service Acas has produced useful guidance on marriage and civil partnerships and the workplace.

Neither marriage nor civil partnership are defined in the 2010 *Equality Act*, but the law is taken to broadly cover people who are married in a legally-recognised union or in a legally-recognised and registered civil partnership. And it is unlawful to discriminate against or treat someone unfairly because they are married or in a civil partnership.

The guidance says that same-sex couples who register as civil partners or who marry have mostly the same employment rights as married opposite-sex couples.

There are three main types of marriage and civil partnership discrimination, according to Acas.

Direct discrimination is when someone is treated differently and not as well as other people because they are in a civil partnership or married. For example, a married member of the team is not promoted as they will need to travel and the employer feels that the job is best suited to a single person.

Direct discrimination by perception and association do not apply to marriage and civil partnership.

Indirect discrimination can occur where a workplace rule, practice or procedure is applied to all workers, but disadvantages people who are in a civil partnership or marriage.

Finally, victimisation is when an employee suffers what the law terms a "detriment" – something that causes disadvantage, damage, harm or loss – because, for example, they have made or supported a complaint about marriage or civil partnership discrimination.

Acas says it is important that employers ensure terms and conditions of employment, including contractual benefits, do not generally disadvantage or exclude people because they are married or a civil partner.

Also, terms and conditions and benefits given to opposite-sex married employees and their spouses, same-sex married employees and their spouses, and civil partner employees and their partners should generally be the same.

This might include pay, being allowed to work flexibly, parental leave, paternity leave, shared parental leave, adoption leave and any gift from the employer or extra days off when an employee marries or enters a civil partnership.

However, an employer may be able to justify different terms and conditions if there is an important factor or factors not related to marriage or civil partnership, or, for example, the employee's sex. For instance, these factors might include job expe-

rience, qualifications and where the job is based geographically.

If an employee feels they have been discriminated against, they will be able to bring a claim to an employment tribunal. However, it's best they talk to their employer before doing this to try to sort out the matter informally.

As well as the guide, Acas had produced a leaflet on the top 10 myths surrounding marriage and partnership discrimination and the workplace.

www.acas.org.uk/index.aspx?articleid=1831

Pay protection a reasonable adjustment

The Employment Appeal Tribunal (EAT) has ruled, in the case of *G4S Cash Solutions vs Powell*, that pay protection could be counted as a reasonable adjustment in certain circumstances.

Powell, an engineer, developed a back condition that required him to perform lighter duties. Integrated cash management organisation G4S Cash Solutions accommodated this by assigning him to a new role as a key runner. Although the key runner role had a lower rate of pay, Powell's original salary was maintained.

When G4S Cash Solutions looked to discontinue the key runner role for organisational reasons, Powell raised a grievance and the organisation agreed to make the job permanent, but at the lower rate of pay typical of the key runner role. Powell disputed this, and when an impasse was reached, he was dismissed.

Full details of the case are in the legal pages of the October issue of *Workplace Report*, LRD's magazine for union reps and negotiators.

www.employeebenefits.co.uk/issues/october-2016/pay-protection-could-be-a-reasonable-adjustment-for-disabled-staff/

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