

Covid-19 and the gig economy: watershed moment or flash in the pan?

Blog post by Senior Associate Max von Thun, 18 March 2020

The accelerating spread of Covid-19 in the UK has raised concerns around the vulnerability of self-employed workers in the gig economy, who among other entitlements lack the statutory sick pay available to employees. If suspected of having the virus, many will be forced to choose between losing pay by self-isolating themselves or continuing to work while ill - putting both their own health and that of the wider public at risk.

These concerns have in turn reawakened a wider debate on the rights and protections afforded to gig economy workers. The Trades Union Congress and the GMB union have responded to the crisis by arguing that all ‘workers’, not just employees, should have access to statutory sick pay, while Parliament’s Business, Energy and Industrial Strategy Committee is [holding a hearing](#) on how Covid-19 will affect gig economy workers and those on zero-hour contracts

Responding to growing pressure, in [last week’s budget](#) the chancellor, Rishi Sunak, announced a number of measures to support the self-employed through the upheaval. These include making Employment and Support Allowance (a state benefit accessible to those not eligible for statutory sick pay) available immediately rather than after eight days, increasing the generosity of Universal Credit for the self-employed, and £500m hardship fund for local authorities. Further measures are expected in the coming days as part of the chancellor’s promise to do “whatever it takes”.

The sudden attention being paid to the precarity facing many workers in the gig economy inevitably raises questions about the government’s wider strategy. Given the pace of events in Westminster over the past few years, it can seem like eons since the [Taylor Review of Modern Working Practices](#) first saw the light of day. Published back in 2017 as part of former prime minister Theresa May’s mission to help society’s “just about managing”, the Taylor Review considered how “employment practices need to change in order to keep pace with modern business models” and issued a series of policy recommendations.

A whole year and a half later, the government finally issued its formal response, the [Good Work Plan](#). Yet although it accepted almost all of the review’s recommendations, few have been meaningfully acted on, with only a small number of relatively minor provisions set to come into effect in April. With a new government in place and an Employment Bill promised in [December’s Queen’s Speech](#), how much progress can we expect?

Based on past evidence, not a whole lot. As mentioned, several changes recommended by the Taylor Review will become law next month, including abolition of the “Swedish Derogation”, a legal provision which allows agency workers to be paid less than their full-time equivalents, and the extension of the right to receive a written state of employment particulars to “workers” as well as employees.

Yet the review included many more, often bolder recommendations that remain lost in the long grass. These included a number of proposals which would have a significant impact on the gig economy, including updated laws and tests on employment status, an online tool to help individuals determine

that status, and a new “dependent contractor” employment category for those who neither fit the description of a full-time employee nor a freelancer.

Though employment status considerations can seem esoteric, they are in fact fundamental to the nature of the gig economy and its ability (or inability) to operate. One of the biggest and most controversial debates has been around whether platform workers - such as ridesharing and food delivery app drivers - are genuinely self-employed.

While the companies insist they are, pointing to the freedom their staff enjoy vis-à-vis regular employees, critics - particularly trade unions - have argued that they are employees in disguise being deprived of their rights to benefits such as a minimum wage and paid holidays. A third group has suggested that gig economy workers - who they argue are subject to a degree of control by platforms - fall somewhere in between full-time employees and the genuinely self-employed, meaning their rights and responsibilities should also sit somewhere in the middle.

Given the difficulties this ambiguity has created for both gig economy platforms and workers, reflected in a growing number of high-profile court cases, one might think new legislation on employment status would be imminent. But in the detail provided by the Queen’s Speech on the planned Employment Bill, no mention whatsoever was made of new rules on employment status, although the bill will establish a new body to strengthen enforcement of existing rules.

While changes to the employment status regime may still appear in the final legislation, there are good reasons to believe this is unlikely. Beyond the traditional Conservative instinct to avoid over-regulating business, the government will be reluctant to rock the boat with major changes at a time of economic uncertainty.

Yet covid-19 could change all that. By amplifying societal concerns about the adequacy of the safety net available to those in less secure forms of work, the pandemic may well lead to a permanent increase in their bargaining power. Having tacitly conceded - through their emergency measures - that current protections are insufficient, governments (as well as companies) may find it harder, even in normal times, to resist calls for expanded rights from workers and unions. Time will tell whether we are witnessing a watershed moment or a momentary flash in the pan.