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Direito do Trabalho & Fundos de Pensões / *Employment & Pensions*

Uber and the Domino Effect

Last Friday, October the 28th, the Central London Employment Tribunal sentenced Uber to recognize two drivers, James Farrar and Yaseen Aslam, as its employees. The two drivers, with the support of the GMB union, claimed that their categorization as "independent workers" was erroneous and the court agreed with their arguments.

Uber is a software platform that connects passengers with drivers through an app. The passenger makes an electronic payment to Uber, which then (after deducting its fee) sends the payment to the driver. This platform is available in hundreds of cities around the world, including Lisbon, Oporto and, more recently, in some Algarve's cities.

In this company, **drivers have always been classified as "independent workers"**, which has been generating antagonistic views on the matter. Maria Ludkin, legal director at GMB union, believes that these drivers are real employees and that Uber, by classifying them as "independent workers", is denying them of basic labour rights, such as minimum wage and daily and weekly working hour's limits. On the contrary, Jo Bertram, regional general manager at UK, Ireland & Nordics Uber, states that the drivers want, exactly, to have the type of autonomy that an employment contract does not allow and want to be able to work when they want, for how long they want and in their own terms.

The truth is that the Londoner court did not agree with this last opinion, being peremptory in declaring that **what matters is to assess the nature of the factual relationship** between worker/ service provider and company. Therefore, the signed contract may be a provision of services but, substantially, it is an employment relation.

According to the Portuguese regime, the employment contract corresponds to that by which an individual undertakes, against payment, to provide his/her activity to a person or company, within an organization and under that person or company's authority. **When in doubt, the Portuguese Labour Code establishes a list of indications that, when verified, creates the presumption of the existence of an employment contract** - for instance, if it is paid, with a certain frequency, a fixed pecuniary amount to the service provider as return for his/her activity; if the

service provider performs his/her activity within a certain and pre-established time schedule; if he/she performs his/her activity in a location own by the service beneficiary; amongst other indications.

The main argument in which the Londoner court based its decision was the degree of control that Uber exercises over the drivers, since:

- i) The drivers cannot negotiate the terms of the service provision with the passengers;
- ii) Those terms can be unilaterally altered by Uber;
- iii) An evaluation system is in place;
- iv) The drivers may be compelled by Uber to accept or refuse services;
- v) Uber controls key information, such as the passengers data;

Amongst other aspects that can be found in the ruling.

This tribunal even deemed that Uber's allegation that it is linking the 'small businesses' of individual drivers was 'faintly ridiculous'.

A domino effect is predicted, not only with the rest of the Uber drivers - and not only in the United Kingdom - but also for other companies that constitute the so called *gig economy*. This new form of market, in which temporary positions are common and companies' contract with independent workers for short-term engagements, has help to create **a new strain of workers**, who, because of their flexibility, do not fit in the traditional employment models - dependent and independent workers - and demand a readjusting of the mindset.

However, and until then, there has been an increase of control, in several countries, over the so called "job insecurity", namely towards the "false green receipts" e the temporary work agencies. Take Portugal as an example, where there is the legislative intention of expanding the law on "false green receipts" combat to false internships, scholarships, temporary work and informal work.

It is advised that companies operating in this *gig economy*, or that depend a great deal on the services of independent workers, take this pivotal decision into consideration and, at least, **assess the nature of the contractual relationship** with those workers, as well as **the risk of those service providers being considered as the company's employees** - with all the retroactive effects.

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