WORKERS IN THE GIG ECONOMY: FOODORA BIKE COURIERS

On 7 May 2018, the Court of Turin published its opinion and reasoning in the context of the legal action commenced by Foodora's delivery bike couriers, who had sought a ruling from the Court finding that their employment status was subordinate employment. In its ruling, the Court of Turin denied the claims and requests of the delivery couriers.

The reasoning of the Court is based principally on the finding that the couriers were not bound to perform the delivery service, rather they could decide whether to accept (or not) each and any request to deliver. On this basis the Court has deemed that Foodora has no opportunity to exercise organisational powers and has no authority to direct the workers.

This is the first ruling by an Italian Court that addresses the status of workers in the Gig Economy. English Courts, on the other hand, have ruled in certain cases involving these new employment relationships: however, the substantial differences between the various types of working activities have supported varying determinations by the English Courts, each based on different elements of the working activities.

In its ruling the Court of Turin stated that other important issues relating to the Gig Economy remain open, such as whether these workers are adequately remunerated, which it was not in a position to address given that the cause of action before it focused exclusively on job status.

Therefore, it is reasonable to expect developments in this field, on which legal scholars and writers are also focusing their attention.

Key issues

- For the first time in Italy, a Court rules on employment status in the Gig Economy
- The ruling denied the couriers' claim that theirs was a subordinate employment relationship
- A number of issues relating to these new jobs still need to be addressed, such as whether the workers in the Gig Economy are adequately remunerated

THE DECISION OF THE COURT OF TURIN

The plaintiffs had entered into autonomous employment relationships with Foodora, in the form of coordinated and continuous work, and sued Foodora, seeking to classify their work relationship as one of subordinate employment, requesting all related benefits.

The Court of Turin, following its analysis of the working activities – as performed by the plaintiffs – found that they cannot be classified as a subordinate employment relationship.

Primarily, the Court gave great weight to the fact that for each and every delivery, a rider could decide whether he or she was available and willing to perform that delivery.

Thus, the Court reasoned that if Foodora could not demand that the courier perform the services, then it could not exercise any organisational authority over the riders and had no power to direct them, which are essential elements to qualify an employment relationship as a subordinate employment relationship. The Court further found that Foodora lacked any such authority to organise and power to direct even in those instances when the courier had stated willingness to perform the delivery, finding that Foodora merely acted as a coordinator, without imparting specific orders and without exercising continued monitoring and control.

In addition, the Court found that Foodora had no disciplinary powers, deeming that it had never imposed disciplinary measures on any couriers. Although the Court acknowledged that couriers could be prevented from accessing the corporate online chatroom, it found that this was not a disciplinary sanction because the couriers did not have the right to be included in in the chatroom. These additional grounds were used to exclude a finding that a subordinate employment relationship existed between the parties.

AFTER LEGISLATIVE DECREE 81 OF 2015

As a last consideration, the Court of Turin addressed the provision under Article 2 of Legislative Decree 81/2015, which states that: "*the legislative framework applicable to subordinate employment relationships applies also to autonomous relationships that give rise to working activities that are exclusively personal, continuous and performance of which is organised by the principal also in respect of working hours and workplace.*"

In its ruling, the Court of Turin deems that it is likely that the legislator has attempted to expand the scope of subordinate employment, but missing the mark and actually narrowing it, by requiring that direction and organisational power be exercised "also" (with the meaning of "not only"), in respect of work hours and job sites.

IN THE UNITED KINGDOM: THE UBER CASE AND THE DELIVEROO CASE

Two Courts in the United Kingdom that have ruled on similar issues have reached partially differing conclusions.

- The ruling of one Court recognised that Uber drivers are "workers" for the purposes of remuneration, and thus are eligible for the national minimum wage and other statutory rights such as holiday pay. The Court reasoned that the claimants were workers and that working time started from the moment when the driver switched on the Uber app, thus announcing availability and willingness to accept an assignment and to perform work for the benefit of the employer. This ruling was upheld upon appeal, whereby the second degree court declared that the employment contract is not automatically determinative of employment status; rather, the Court will determine employment status having regard to all circumstances, including what happens in reality. This notion of making an assessment on the basis of actual circumstances is aligned with consistent precedent decisions of Italian Courts.
- Another English Court, on the contrary, found that Deliveroo riders were not workers, thus setting out a distinction among the various types of jobs that are evolving as a result of the Gig Economy. In this case, the Court reasoned that the workers had an unrestricted right to appoint a substitute to perform the deliveries assigned to them and consequently concluded that they had no personal obligation, and as such could not be classified as "workers".

CONCLUSIONS

The analysis of employment status in relation to the growing, diverse work models in the Gig Economy is highly complex. No one decision fits all "gigs", and a grey area is evolving for those jobs where at least some power to organise and authority to direct appear to exist.

Scholars and unions' representatives are discussing the request to approve a new piece of legislation, asking for the creation of a set of safeguards that will be applicable to jobs created in the emerging Gig Economy irrespective of how the employment relationship and worker status is classified.

The Italian Ministry of Labour has initiated a consultation with the parties involved in order to draft the first National Collective Bargaining Agreement of the Gig Economy.

In the event an agreement is not reached, the Government has clarified that it will issue a new piece of legislation in order to ensure the protection of employees of the Gig Economy.

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