

The Rise of the Gig Economy: UAE Employment Considerations

December 2016 – January 2017

Uber, Lyft and Airbnb are classic disruptive technology companies in that they have utterly transformed their market sectors and heralded new individual working practices and arrangements—resulting, most notably, in the rapid rise of the “gig economy”. This is a term used to describe casual work undertaken on a piecemeal basis. Some workers prefer to operate within the gig economy whilst for others it is a matter of simple economic necessity.

From a general employer-employee perspective, Uber’s model in Western jurisdictions has brought about a marked shift from the traditional working model of employment with a fixed employer and on a permanent status basis to a more loose arrangement focused on flexibility, autonomy and self-control over working schedules, hours and activities. Uber’s model has in effect operated on the basis that it is a technology platform, as opposed to a transport provider, and that its drivers are therefore self-employed workers offering their services to passengers via the online Uber app. A self-employed contractor does not have the same rights, benefits and protections as an “employee” – great for the gig economy company, but not so for the worker. This has led to some soul searching in various jurisdictions as to the desirability of this model.

An employment tribunal in the UK most recently held that drivers engaged by Uber are not self-employed or independent contractors, but fall within the definition of ‘worker’ (under applicable UK employment legislation) with the consequence that they are legally entitled to the national minimum wage, paid annual leave, and whistleblower protection etc. In the tribunal’s view, any driver who has the app switched on; is operating within the territory in which he or she is authorised to work; and is both able and willing to accept assignments; is working for Uber under a contract of employment. The judgment, which is subject to appeal (not least because it threatens the whole working model concept), serves as a salutary warning of the issues inherent with such novel working practices and models, particularly against the backdrop of an increasingly developing digital age.

The gig economy & the UAE

The employment landscape in the UAE does not naturally lend itself to such flexible working models: all expatriates, in order to lawfully reside and work in the UAE, must be sponsored by a locally licensed and registered entity for UAE work permit and residency visa purposes. Such sponsorship is both employer and location specific, entitling the employee to work only for their sponsoring employer and at the premises under which their visa has been obtained. Whilst Uber and (the Middle East equivalent) Careem operate in the UAE, the set-up is markedly different to their Western model. Typically, the model in the UAE works, broadly, as follows:

- booking platform operator enters into a commercial services contract or agreement with a locally licensed and registered limousine company in order to avail of its limousines and drivers;
- its pricing of services must be in line with the limousine services and cannot compete directly with the city’s regular taxi companies; and
- it does not engage the drivers directly (which is the model in other Western jurisdictions) given the regulatory and licensing regime in the UAE. This therefore means that the drivers remain employees of the limousine company throughout – not of the booking platform operator.

From an employment perspective, then, the model is still very much the classic employer-employee one, with the employees of the limousine companies still falling within the folds of the UAE Labour Law and entitled to basic standards and protections (including, as applicable, maximum working hours, sick leave and pay, the right not to be unfairly terminated and end-of-service gratuity). Their employment relationship is very much specific to the limousine company only. It is a similar model throughout the GCC. The fact that the licensing regime in the UAE does not permit a driver (in this instance) to be engaged directly by such booking platforms adds another interesting and unique layer to the mix – which is not generally a matter of consideration in other countries in which Uber-esq models operate.

Future developments...

Is there scope for a genuine gig economy in the UAE? Could the concept of atypical working be adapted across other industries in the UAE? Yes, but it will require legislative change.

The UAE's employment regime is inextricably linked to the immigration regime which itself is fairly static (very limited exceptions apply). However, the UAE does recognise the concept of “the freelancer” or “independent worker” – but not in the same manner as other Western jurisdictions (and certainly not in the same manner as Uber-esq models). Freelancers/contractors can set up their own businesses (ordinarily in the various free zones) and, subject to the terms of their licenses, can render services to other companies but usually within the confines of the free zone in which it operates. Work outside the free zone is generally not permitted. To that end, it remains to be seen whether a special flexible model of work (similar to the Western concept of independent contractor) will be developed or created in the UAE and across certain industry sectors, with the aim of creating greater flexibility. This would entail careful consideration, to ensure that appropriate frameworks are in place to accommodate the needs and requirements of both companies and individuals operating under such a model, whilst maintaining a differing approach to such a set-up from an employment law perspective. One would imagine that the appetite to introduce any such change would be limited to top end sectors/workers and not across the board generally as that would represent a paradigm shift in the entire fabric of the UAE visa/employment regime.

Technology has certainly made connecting workers and customers easier than ever before. This has enabled the rise of the rapidly growing gig economy. However, there has in other jurisdictions been an increasing trend of attempting to re-characterise gig-economy companies as employers of the independent contractors/workers. Such a re-classification, it has been argued, hinders the growth of gig economies. It remains to be seen to what extent a new flexible model – creating a genuine self-employed relationship of the kind envisaged by gig economy firms – can be adapted in the UAE.