

I. INTRODUCTION:

This document is not intended to constitute comprehensive legal advice but contains practical information which will help you in conjunction with any legal advice you do seek. The first part consists of answers to many FAQs, and the last part is a brief guide to how you can seek access to legal aid.



II. FREQUENTLY ASKED QUESTIONS:

Gig Workers

1. What is meant by the term 'gig economy'?

The term gig economy, also known as the sharing or platform economy, describes the phenomenon of providing services through digital platforms.

Where the traditional economy consists of full-time workers and employees who have entered into a contract of employment, the gig economy comprises short-term and unpredictable work arrangements organised through a digital platform (typically an app on your mobile phone)

An aspect of the gig economy is gig work. Gig workers are generally those types of people who provide specific services organised through digital platforms. These can be location-based apps allocating jobs such as food delivery and taxi services or web-based platforms allocating work such as translation and graphic design. These may include independent contractors or freelancers who work temporarily for multiple clients. The work may be project-based, hourly or part-time. They enter into formal agreements with on-demand companies to provide services to the company's clients.

2. How do I know if I am a gig worker?

This depends on the type of work that you do. Below are some characteristics of a typical gig worker.

Characteristic checklist:

- You are connecting with clients or customers through a digital platform
- You have been designated as an independent contractor / freelancer / project-based worker
- Your job is flexible, temporary, and providing on-demand services
- You have an agreement with an on-demand company to provide services to that company's clients

- There is a certain degree of control of your work by the company

Note: All of the above do not define your employment status.

3. What are the common examples of 'gig work'?

- Food delivery driver (e.g. Uber Eats and Deliveroo riders)
- Rideshare driver (e.g. Uber)
- Courier delivery person
- Personal shopper
- Mover and Tasker (e.g. TaskEasy, YourMechanic, TaskRabbit)

4. Is this the same as zero-hour contracts?

No, gig economy work and 'zero-hour contract' are not the same thing, but they sometimes get referred to together when discussing employment practices. This is probably because both treat workers as contractors due to the flexible nature of both statuses. Additionally, they offer no guarantee of regular levels of pay or work patterns.

5. So, what is the difference between gig workers and zero-hour contracts?

While gig economy roles imply self-employment and those attached to them are typically paid per job (like a set rate to deliver a package), zero-hour contract workers are paid by the hour, but there is no set minimum of hours. Also, on a zero-hour contract, there is an entitlement to holiday pay, but not sick pay, as opposed to self-employed persons who do not enjoy both of these benefits.

Employment status

6. What are the different categories of employment status?

There are three categories of employment status an individual may fall under. These are employees, workers, and independent contractors. Only the first two statuses enjoy protection under employment law.

Employee - you are more likely to be classed as an employee if:

- Your employer, manager or supervisor oversees your workload and how your work should be done
- You're required to work regularly, but you are paid even when you're on leave
- You can expect work to be consistently available
- You cannot refuse to do the work
- You're employed to do the work yourself

Worker - you are more likely to be classed as a worker if:

- Your work for the organisation is more casual; for example, if your work is less structured or not, regular
- You're employed to do the work yourself
- You're not offered regular or guaranteed hours by your employer (zero-hour contracts)
- You are paid for the work you have provided and have agreed to, but not for being available to work even if no work is actually available.

Independent Contractor - you are more likely to be classed as an independent contractor if you:

- Are responsible for how and when you work
- Are the owner of a company or a freelancer
- Invoice for your pay instead of getting a wage
- Get contracts to provide services for your clients
- Can send someone else to do the work for you, if appropriate
- Can work for different clients and charge different fees
- Run your own business and take the full risk of profit and loss

7. Who is protected by the Employment Rights Law?

The Employment Rights Act 1996 is the main source of legislation that protects employment rights. The Act protects mainly employees and workers. Employees are entitled to full rights while workers enjoy some rights. There is generally no labour protection for an independent contractor, yet there are some exceptions like anti-discrimination as long as they perform the work personally.

8. Are gig workers employees, workers, or independent contractors?

Gig workers are not explicitly recognised within the statutory definitions of employees and workers and consequently, on the face of it, could not enjoy the rights associated with such employment statuses. However, under the landmark decision in *Uber BV and others (Appellants) v Aslam and others (Respondents)*, UKSC has confirmed that Uber drivers were to fall under the category of workers and that they are not independent contractors. The court concluded that as it accepted, among other things, there is a sufficient level of control over them by Uber. Uber fixed the remuneration paid to drivers for the work they did. The drivers had no say in it, and Uber exercised a significant degree of control over how drivers delivered their services, e.g. by vetting the type of cars that may be used.

This, however, is not the case for all types of gig workers. The Court of Appeal ruled out Deliveroo drivers as workers categorising them only as self-employed. This decision

was made very recently on 24 June 2021, and we await to see if the UKSC holds a different view. You can read more on the Court's decision here: <https://www.bailii.org/ew/cases/EWCA/Civ/2021/952.html>.

9. How do I know if I am a worker?

- You should be paid by the work actually offered and done instead of your availability to work. You should have a contract for services (work for payment or reward), whether express or implied and (if it is express) whether oral or in writing, which would imply this mutual obligation between you and the employer (offer work/pay for the work offered).
- There is an obligation for personal service. That means you cannot offer others to do the work for you.
- You must not be in the business of your own account. Instead, you should be working for the company.

10. What if my contract states that I am an independent contractor?

The job title described in the contract is not important when determining your employment status. Whatever you are being called in the contract, we still need to look into the details of the job to assess your employment status. You may still be considered as a worker or even an employee!

Rights and protections:

11. What employment rights do I enjoy?

The employment rights available to you depend on your employment status. Some of the rights enjoyed by workers include the national minimum wage, statutory sick pay and holiday pay, statutory maternity pay and protection for whistleblowing. Employees have all the rights that workers do as well as some extra rights including redundancy pay and being able to claim unfair dismissal after two years of continuous service.

12. As a gig worker, do I enjoy any employment rights?

If you are classified as a worker or even an employee, you can enjoy the corresponding rights.

13. What are my rights if I am a worker?

- The right to a document describing the terms and conditions of your employment
- Entitled to the national minimum wage
- Rights relating to working hours

- Entitled to holiday pay, statutory sick pay and maternity pay
- Anti-discrimination rights
- Rights relating to trade union membership and industrial action
- Right to be accompanied to disciplinary hearings
- Part-time worker protections
- Whistleblower protection

14. Can I claim unfair dismissal or redundancy as a gig worker?

No, you cannot. Only employees have the right to claim wrongful dismissal and redundancy.

15. Do gig workers have any health and safety protection?

Because the gig economy is a new, flexible, and short-term model of work, it does not provide the benefits, and the protections that come with traditional full-time employment, such as life and health insurance, Gig workers (and consumers), as their employers' insurance does not cover them, may be exposed to greater risks than traditional employees. If you are classified as a worker, and some gig workers are, then you are offered some work-related protection.

Empowerment:

16. What are the main challenges for gig/platform workers?

The main problems with the gig economy, that is, pay, rights, and conditions are to do with the exploitation by gig companies to gain a competitive advantage. By classing their workers as 'self-employed contractors', gig employers can refuse their workers from accessing rights and benefits such as pensions, sick and holiday pay and parental leave, which are considered basic rights for workers and employees.

As a gig worker, you are likely to be living 'on demand' at the beck and call of an online app just to make ends meet. The lack of financial security for gig work means that they could be earning less than the minimum wage as they are paid per job.

17. What can I do if my rights are being harmed?

There are two ways to empower yourself. One is through litigation and taking legal action; one is through joining a Trade Union and taking industrial action.

Litigation:

18. What kind of evidence do I need to assemble for an Employment Tribunal?

The written contract you have will form the starting point for analysis, but it will not be the only document considered. Tribunals will look into the reality of the work while deciding your status and rights, and so you will need to provide more information than just your contract when you meet your lawyer.

Also be ready to have an answer to the following:

- What do you actually do daily in the job, e.g. what digital platform/app do you use during work?
- Who shapes your duties and working time?
- Employer's level of power to exercise control over you and your work, e.g. Do they issue directions and supervise? How?
- Where do you work? Do you use your own space and equipment/tools at work? Are you using your own car for delivery, or the company provides it?
- Do you have to wear a uniform?
- How do you get paid? Do you get paid only for the work done or paid for by wage or salary?
- Who organises income tax and National Insurance contributions as an employee?
- Who is burdened by the financial risk of not working?
- Whether you are subject to any disciplinary procedure
- Whether you're expected to carry out the work yourself, or you can send others to do the job for you

Unionisation and Industrial action:

19. Is there anything more to do besides seeking legal advice or engaging in litigation?

Besides by means of court, you can also join or form a Trade Union. In that way, you can achieve:

- A more equal footing with your employer
- The power to engage in industrial action
- Access to a network of support

20. What are Trade Unions?

A trade union is an organisation with members who are workers or employees. It looks after their interests within the workplace by doing things like:

- Negotiating agreements with employers on pay and conditions
- Discussing big changes like large scale redundancy
- Discussing members concerns with employers
- Going with union members to disciplinary and grievance meetings

- Providing information to its members
- Preparing and facilitating industrial action, when necessary

21. What are the objectives and benefits of Trade Unions?

Trade Unions are at the forefront of making sure employers give workers their rights by supporting individuals and groups of individuals both in legal claims, which clarify the law for everybody and industrially through the power of collective bargaining. Collective action enables trade union members to strengthen their bargaining power against their employer. It also allows them to force their employer to comply with their obligations by exercising pressure through means of industrial action.

If you're a member of a trade union, you should contact them first. If you're not a union member, you should consider joining one or even create one yourself. You can also get help from the Citizens Advice Bureau on this.

22. What does it mean to take industrial action?

Industrial action refers to the freedom that employees and workers have to come together to combine and act collectively to withdraw their labour. The most common form of industrial action which you may be familiar with is strike action.

23. What does it mean to go on strike?

It means you stop working and withdraw your labour. Although there is no positive legal right to strike in the UK, strike action organised by a trade union is legal provided that some tough conditions are met.

Such conditions include:

- The dispute must be related to a trade dispute between workers and their employer.
- A secret postal ballot has been held, and the majority of members voting have supported the action.
- Detailed notice about the action has been given to the employer at least seven days before it commences.

If you are unsure about whether you are covered if you withdraw your labour, ask your trade union representative for confirmation.

24. What is meant by 'collective bargaining'?

By becoming a member of a trade union, you have access to collective bargaining. This means that the union can negotiate with your employer on your behalf and collectively

for large groups at the same time about shared issues within the workplace such as wages, working conditions and other terms and conditions of your employment.

25. Is collective bargaining available to gig workers?

Yes, if you are classified as a worker. When it comes to the gig economy, it is not entirely clear how collective bargaining standards should apply to workers in alternative arrangements. Many of these individuals have non-traditional working environments and more fluid hours than workers in traditional jobs. In addition, these individuals work independently of other workers and often do not take direct orders from supervisors.

However, gig workers could potentially form smaller micro-unions within a specific company, allowing individuals who work for that company to collectively bargain for better pay and more equal working conditions.

26. Should I worry about my employer discovering that I am part of a Trade Union?

No. As a worker or employee, you have the right to:

- Choose to join or not join a union
- Decide to leave or remain a member of a union
- Belong to the union you choose, even if it's not the one your employer negotiates with on pay, terms, and conditions
- Belong to more than one union

Your employer is not allowed to:

- Offer you a benefit to leaving a trade union
- Threaten to treat you unfairly if you do not leave a union
- Refuse to employ you for trade union membership or
- Dismiss you for trade union membership

Suppose you are being penalised or refused employment as a result of your trade union membership. In that case, you may be able to use a grievance procedure or go to an employment tribunal.

27. What protection is available to gig workers throughout the COVID-19 pandemic?

The legislation only protects the job retention scheme for those who are classified as workers.

The COVID-19 pandemic has posed two major risks to platform workers: exposure to the virus and income loss. In response to the crisis, governments have taken

unprecedented steps to provide assistance to workers outside of traditional working relationships, including platform workers. But platform companies themselves have also taken measures to protect the health and the incomes of gig workers, for example, by taking measures to promote social distancing and/or the safe provision of services, including introducing contactless delivery or temporarily ceasing high-risk services and providing PPE (personal protective equipment) or hygiene products to workers. Platform companies tend to offer such protections to gig workers in jurisdictions in which they have been recognised as workers or employees. Usually, a Trade Union will have supported the litigation that led to that recognition.

28. What is the coronavirus job retention scheme?

This is a government scheme under which an employer can furlough its employees if it needs them to stop work due to circumstances arising from coronavirus. The job retention scheme does not apply to self-employed persons.

29. What does it mean to be furloughed?

An employee furlough is a mandatory suspension from work which can be brief or as long as the employer requires. If you have been furloughed, the Government provides 80% of your salary (a maximum of £2,500 a month).

Further Information and Resources:

For more information on checking your employment status and the rights available to you, please refer to the ACAS website

<https://www.acas.org.uk/checking-your-employment-rights>.

To read more about the impact of COVID-19 on employment and the help available to employees and workers, visit <https://www.acas.org.uk/coronavirus>.

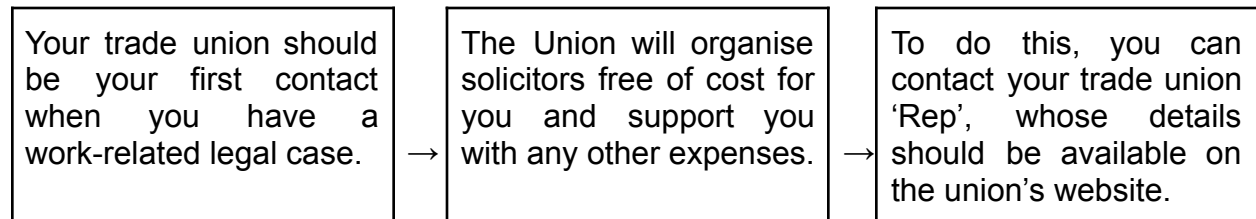
Finally, for help with trade union-related queries, contact the [Advisory, Conciliation and Arbitration Service \(Acas\)](#).

III. LEGAL AID:

The complexity of the Employment law can make it difficult for you to distinguish between self-employed and workers. Also, the time frame to bring a claim is only **03 months minus one day (plus any extension of time through ACAS Early Conciliation)**. So, it is essential for you to seek quick and trusted legal advice. If you

are not able to afford advice yourself, you may be able to seek legal aid. Legal aid can help you meet the costs of legal advice, court fees, representation in court etc.

Procedure:



To find a list of all the unions, click below on the Trade Unions Congress (TUC)'s 'Work Smart' website, which lists all trade unions: <https://worksmart.org.uk/tools/union-finder>.

If you are not a part of a Trade Union and need legal advice/support, then you can find help in the following ways:

In England and Wales, to receive legal aid, you need to show that

- Your case classifies for legal aid
- The problem is serious
- You cannot afford to pay for the legal costs

You can check if you qualify for legal aid on the Gov. UK website: <https://www.gov.uk/check-legal-aid>.

To seek Legal aid or apply for help, you can also look at the following organisations:

- [University of Manchester Justice Hub](#)
Offers free legal advice on various legal issues such as consumer, employment, wills and probate, family law etc.
- [Citizens Advice](#)
Has a network of independent charities which offer confidential advice online, over the phone, and in-person, for free
- [Advocate](#)
Finds free legal help from barristers.



- [LawWorks](#)

A charity working in England and Wales to connect volunteer lawyers with people in need of legal advice who are not eligible for legal aid and cannot afford to pay and with the not-for-profit organisations that support them.



Lastly, you could also attend [GMLC's \(Greater Manchester Law Centre\)](#) monthly Employment Legal Advice Clinic here <https://www.gmlaw.org.uk/employment-law-information/>.that

