



Ireland must rethink its approach to the gig economy

By **Niall Pelly** in **Personnel Today** - 27 April 2021

Dublin's binary approach to the gig economy – in which delivery riders either have no employment rights whatsoever or are fully employed – has created a zero-sum game for platform operators and contractors. It's time for the Irish government to address this unsustainable situation, argues [Niall Pelly](#).

The recent high-profile decision of the UK Supreme Court in the Uber case shone an unfavourable light on the gig economy in Ireland, where whole sections of the workforce, such as food delivery riders, currently have no employment rights because of their classification as independent contractors. This is perceived to be unfair in circumstances where a distinction is instinctively drawn between these types of workers and business owners who are truly operating on their own account.

"Platform providers are only one adverse court decision, or government intervention, away from their entire business model being put into doubt" says [Pelly](#). However, when the plight of workers in the gig economy is reported in the Irish press, the focus invariably tends to be on the employment rights that are not available to them. Very little scrutiny is given to the absence of corresponding employment responsibilities on the part of gig economy workers.

Free to decide

Workers in the gig economy are free to decide when and where they work. Even when logged on to work, they can typically accept or refuse available assignments. They can appoint a substitute to carry out their work. They are free to work with direct competitors. A supermarket employee can't decide whether they are going to work for Dunnes Stores or Tesco that day, let alone expect to send a substitute in their place. These are not the features of an orthodox employment relationship – the gig economy is something that is undeniably more fluid and flexible.

Unlike the UK, Ireland retains a binary system in which individuals who carry out work are either employees or independent contractors. It is an all-or-nothing system where workers either have full employment rights or none. The net effect of such a system, however, is that platform providers are only one adverse court decision, or government intervention, away from their entire business model being put into doubt.

A binary system is also unhelpful in that it results in – indeed, from the perspective of trade unions, necessitates – agitation on classification issues. Under existing EU competition rules, self-employed workers are classed as “undertakings” and, therefore, any collective efforts on issues such as pay bargaining run the risk of being viewed as cartel-like behaviour.

Across Europe, this has led to trade unions pushing for gig economy workers to be recognised as employees, so that the trade unions can then represent them for collective bargaining purposes. Platform providers have argued in response that this is merely a tactic designed to confer relevance on trade unions, and to increase their memberships. However, this is not as pronounced an issue in Ireland because, unlike other jurisdiction in Europe, there is no legal obligation on an employer to negotiate with a trade union in Ireland.

Ignoring reality

To date, the Irish government has been reluctant to create an equivalent of the UK’s worker category, intimating that its preference is instead to clamp down on “bogus self-employment” through greater penalties. However, this only exacerbates the issue by raising the stakes, and ignores the reality that most workers in the gig economy are neither employees nor truly self-employed, but instead occupy a space somewhere in between.

“We need to stop viewing the gig economy through the prism of a binary, all-or-nothing employment model that is outdated” adds [Niall](#). Flexibility is the reason the gig economy exists – without it, all that remains is what went before. It is difficult to see why platform providers would choose to operate in the Irish market in circumstances where they carry all the risks associated with variable customer demand. It is also debatable whether gig economy work without flexibility is particularly attractive to workers. For example, the recent approval of a law in Spain that classifies food delivery riders as employees attracted protests, not just from companies operating food delivery apps, but from over 2,000 food delivery riders across 10 cities who wanted to retain the freedom of independent contractor status.

The depth of feeling on the issue in Ireland can be gauged to some degree by the organisation of a temporary strike by food delivery riders across Dublin on 22 January in protest over their pay and working conditions. On the other hand, the number of food delivery riders operating in Dublin has also rocketed in recent months – indicating that, at a minimum, the nature of the work remains highly attractive.

Fatal flaw

The gig economy model doesn’t work unless a platform provider can attract enough people who are willing to carry out the service it is offering. In a highly competitive environment, where platform providers are competing for the same labour force, it stands to reason that the provider that offers the most favourable terms of engagement will prove more attractive to potential workers.

The fatal flaw in the current system is that enlightened platform providers who take it upon themselves to offer additional protections to their workers face a greater risk to their business model, because there is greater likelihood of their workforce being deemed to be employees than platform providers who don’t. It creates a zero-sum game between platform providers and workers.

We need to stop viewing the gig economy through the prism of a binary, all-or-nothing employment model that is outdated. Rather than doubling down on the existing system, the Irish government instead should introduce a third, intermediate category of worker – a category that preserves flexibility for both platform provider and worker, which removes the existential threat for platform providers of deemed employment status, and which strikes a fair balance between the rights that are afforded to workers in the gig economy and the responsibilities that are required of them. The creation of such a category could foster a stronger, vibrant gig economy – turning the current zero-sum game into a win-win for platform providers and workers alike.

If you have any questions about this article or wish to discuss Ireland's gig economy in more detail please contact [Niall Pelly](#).