

LEGAL UPDATE

Deliveroo food delivery workers are employees

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In November 2017 Deliveroo decided to offer its food delivery workers – which Deliveroo calls riders - agreements for services instead of employment agreements. That started a debate on whether the riders could actually be classified as self employed. On 16 February 2021, the Amsterdam Court of Appeal shed more light on the issue.

In proceedings between FNV and Deliveroo, the [Subdistrict Court](#) ruled at first instance that the riders work on the basis of employment agreements. The Amsterdam Court of Appeal upheld that decision, finding that employment agreements were in place because the three requirements had been met: work, salary and authority.

Work

On appeal, Deliveroo once again put forward the defence that the riders have a great deal of freedom in how and when they work. For instance, it uses a system called Frank to determine who gets to deliver which meal. When riders are logged on, they can receive offers from Frank. They can then either accept or reject those offers. If a rider accepts a run, they are obliged to carry it out, but they can also have another rider substitute for them. The Court of Appeal ruled, however, that neither the freedom provided by the system nor this substitute option were incompatible with the existence of an employment agreement.

Salary

As regards salary, the Court of Appeal established that Deliveroo pays the riders per delivered meal and that Deliveroo determines the salary unilaterally. Secondly, it found that the rates Deliveroo pays (EUR 11 TO EUR 13 an hour) could be insufficient to make adequate arrangements for sickness, incapacity for work and/or unemployment. Thirdly, the riders are paid once every two weeks and Deliveroo itself prepares the invoices. Fourthly, it found the fact that Deliveroo continues to pay part of the riders' salary when they are sick indicative of an employment agreement.

Authority

Frank gives Deliveroo far-reaching monitoring powers over the riders, given that it shows the rider's location to both the restaurant where the meal is to be picked up and the customer it has to be delivered to. Riders have thirty minutes to deliver a meal. Deliveroo has changed the prescribed working method several times. All in all, this is indicative of an authority relationship between Deliveroo and the riders.

The parties' intention?

On 6 November 2020 the [Dutch Supreme Court](#) ruled that the parties' intention is no longer important when assessing an employment relationship. The point is rather whether it is in line with the statutory description of an employment agreement. This means that the elements 'work', 'salary' and 'authority' should be assessed objectively. The Amsterdam Court of Appeal's Deliveroo judgment is in line with the Dutch Supreme Court's judgment. This makes concluding an agreement for services more complex. It is therefore sensible to start off by carrying out a legal review of any arrangements made.

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