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Delivery Platform Workers win Employee Status



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The Labour Tribunal recently ruled in favor of 6 workers (“Couriers”) who worked for a food and parcel delivery platform company (“Company”).

The Tribunal concluded that there was an employment relationship between the Company and the Couriers although the Company argued that they were self-employed. The Company was ordered to pay six of its employees outstanding wages, payment in lieu of notice, annual leave, and legal costs.

In Hong Kong, the Employment Ordinance and other employment related laws provide protections only if the workers are “**employee**” but not self-employed or a contractor.

When a person works with a company in the absence of a contract specified to be an employment agreement, there may arise the issue as to whether such person is an employee. There is no single test to distinguish an employment from a service contract, usually the court considers factors such as:

- Whether the company has control over the process, method, venue and timing of the person performing his/her tasks?
- Whether the workplace, tools, equipment and materials for performing the tasks are provided by the company or by the person?
- Can the person control the charge rate of the tasks, and can he/she share the profit in performing the tasks?
- Whether the person has to share the risks or loss, or bear responsibility, in connection with the tasks?
- Can the person engage someone else to help perform the tasks without the company’s prior consent?
- How the remuneration is calculated and paid?
- Does the person carry on business on his/her own account?



In the Couriers' case, the Labour Tribunal has considered the following circumstances in coming into the employment conclusion:

➤ Through its digital platform (“**Platform**”), the Company determined delivery routes, work locations and orders, and remunerations of the Couriers. The Couriers must report duties on time and complete the orders within the designated time prescribed by the Company. They must log in to the Platform and cannot log out at will during work. The Company monitored the delivery routes and time of the Couriers to ensure they meet the Company's requirements and conducted spot checks from time to time. Couriers who refused orders or disobeyed the rules were penalized and in serious cases they may be terminated by the Company.



➤ The Company provided and required the Couriers to wear their uniforms when collecting and delivering packages for its customers to identify the Couriers as part of the Company.

➤ The Couriers provided their own transportation tools and mobile phones. However, the Platform itself enabled customers to place orders and calculated wages payable to Couriers. The Couriers cannot contact customers or complete their delivery services without the Platform, making the Platform (rather than the Couriers' transportation tools and mobile phones) the most crucial tool to complete the tasks.



➤ The Couriers earned wages through their work and the Company controlled and monitored the way they completed the tasks as assigned to them. Also, the Company offered the Couriers short-term “guaranteed income”, unlike independent contractors who would not be paid any basic wage.

➤ The Couriers' remuneration was based on the volume of jobs they complete. Thus, their daily wages varied but they assumed no financial risk since the Company's profits or losses did not concern the Couriers.



➤ The Couriers cannot establish business relationships with customers or offer discounts to customers, because the customers' transactions with the Company only went through the Platform. Thus, they had no opportunity to be involved in or profit from managing the Company's business activities.

➤ As to the charges of their services, the Couriers cannot change the charge rates like what independent contracts usually can. They were not much different from salesmen who earn commissions on a piece-counting basis.

➤ The Company did not allow the Couriers to engage substitutes or subcontracting their work.

➤ The Company did not file tax returns, pay the Mandatory Provident Fund, or provide personal accident insurance for the Couriers. The Couriers had to pay their own third-party insurance and file their own tax returns to the government.

➤ Unlike independent contractors, traffic fines and parking fees incurred by the Couriers were reimbursed to them by the Company.



Key Takeaway

Platform work is a fast growing and new form of job today. Until Hong Kong passes legislation to protect workers or regulate their relationship with the platform companies, the Couriers' case offers guidance to the factors and circumstances that would be considered by the Labour Tribunal in determining the existence of an employment relationship between platform companies or entities of similar nature and their workers.

Nevertheless, commercial terms and work arrangements for different cases vary and the workers may not always be regarded as employees.



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