

**UBER DRIVER: EMPLOYEE/INDEPENDENT
CONTRACTOR QUESTION REMAINS
UNANSWERED**

There has been an ongoing and heated debate in various countries (including South Africa) about whether or not Uber Drivers can be defined as employees. In July 2017, the Commission for Conciliation, Mediation and Arbitration (CCMA) faced the question regarding the employment status of Uber drivers and had to rule whether the drivers were independent contractors or employees.

The effect of Uber drivers being employees would mean that they are covered by the law, more specifically the Labour Relations Act (LRA) and Basic Conditions of Employment Act (BCEA) which includes rules on work hours, payment and leave. It also offers protection regarding correct dismissal procedures and even extends to collective bargaining, health & safety laws.

On 7 July 2017, it was ruled that the Uber drivers were employees as defined in s213 of the LRA. The Commissioner, however, admitted that her ruling was not crystal clear, having accepted certain factors indicating that drivers are employees and others indicating they were not.

The Labour Court has since overturned this 2017 CCMA ruling in **Uber South Africa Technology Services (Pty) Ltd v National Union of Public Service and Allied Workers (NUPSAW) and Others (C449/17) [2018] ZALCCT 1** the court held that the commissioner had earlier refused the application to join international company 'Uber BV' to the proceedings. The Commissioner nonetheless found, on the basis of a

'realities of the relationship test' that the referring parties were employees of Uber SA.

The court found the test to be inconsistent with prevailing authorities. The jurisdictional point was decided on affidavit and by agreement, no *viva voce* evidence had been led at hearing. The court held that the referring parties had failed to discharge the onus to establish that they were employees of Uber SA. The commissioner, having refused to join Uber BV, proceeded to make a ruling on a basis that conflated Uber SA and Uber BV, despite the facts before her disclosing that Uber SA did no more than provide administrative and marketing support to Uber BV.

The commissioner's decision was found to be incorrect and thus reviewable. The question whether the referring parties were employees of Uber BV or independent contractors was left open.

Despite the ruling being overturned, the Labour Court judge presiding over the ruling did emphasize that the CCMA ruling was overturned on a technical point, negligently overlooked by the Uber driver Representatives, SATAWU. The judge further noted that the main question of whether Uber drivers are employees remains unanswered.

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**APHELELE TAPILE
LEGAL ADVISOR**