

The Growth of the Gig Economy

Samir Kantaria - Partner, Head of Employment & Incentives - Employment and Incentives
s.kantaria@tamimi.com - Dubai International Financial Centre

Companies such as Uber, Airbnb and Deliveroo, have become international household names over the past few years. These technology companies are rapidly taking over the markets in which they operate and are pushing the gig economy into new sectors.

The gig economy has led to an increased trend in flexi-working models, with control over working schedules and activities. Uber, for instance, created a model that operates on a technology platform thereby allowing its contracted drivers, who are predominately self-employed, to work at their convenience by accessing the platform through the Uber app when they wish to work.

Conversely, self-employed individuals do not have the same benefits, rights and protections as employees and this has created an ongoing dispute in many jurisdictions. For Uber, the exclusion of rights and protection is hugely beneficial, and means that it does not have to provide the same benefits as it would for its employees. For the individuals themselves, this position is, of course, disadvantageous.

The UK, as an example, has been engaged in a legal battle over the last three years in which Uber drivers claim that they are entitled to the same benefits generally provided to employees, such as protection of wages, and an entitlement to the national minimum salary. In 2016, an employment tribunal determined that Uber drivers were employees and were entitled to the same benefits as a full time worker. Uber appealed the decision and argued that Uber was an agent for its drivers, as reinforced by the fact that the two parties had not signed an employment contract. Unfortunately, for Uber, both the appellate court and the UK Supreme Court upheld the tribunal's decision. In the court's view, any driver who:

- had the app switched on;
 - was operating within the territory in which he or she is authorised to work; and
 - was both able and willing to accept assignments;
 - was deemed to be working for Uber under a contract of employment.
- The judgment is an important one as it sets the tone for other tech-companies operating under similar models and concepts.

There is an increasing number of people willing to work part-time or in temporary positions within the remit of the gig economy culminating in cheaper, more efficient services. In the modern digital world, it is becoming increasingly common for people to work remotely or from home, ultimately facilitating independent contracting work. Despite this, a number of jurisdictions, including the UK, have attempted to re-characterise the independent contractor/self-employed status of individuals to permanent employees. Many believe that this re-characterisation is contrary to the model that gig economy companies are attempting to develop.

How does the gig economy work in the UAE?

The UAE is not as flexible as other jurisdictions and does not accommodate many types of business models. Before an expatriate is eligible to work in the UAE, they must receive approval from the UAE immigration and labour authorities and are required to obtain a residence visa and work permit. As part of this process, individuals are required to enter into a standard short form employment contract prescribed by the UAE authorities.

Because of this requirement, the set-up of on-demand companies such as Uber and Careem is significantly different to the model in other jurisdictions, and follows the classic employer-employee relationship. As such, the individuals (such as the drivers of the Uber cars) are entitled to the same statutory protections as all other employees in the UAE, including overtime, sick leave and pay, annual leave, the right not to be unfairly dismissed and end-of-service gratuity. This model is also encapsulated throughout the GCC region and works in the following way:

1. The booking platform operator (for example Deliveroo) enters into a commercial services agreement with a locally licensed and registered transportation services company; and
2. Deliveroo effectively agrees the outsourcing of its deliveries to the transportation services so that, Deliveroo does not engage the riders directly. This means that the riders remain employees of the transportation services company throughout – not Deliveroo. The fact that the UAE does not permit a rider to be engaged directly by Deliveroo (as there are licensing constraints) is not generally a matter of consideration in other countries in which these type of models operate, making the operation of the gig economy in the UAE unique.

The future of the gig economy in the UAE

In recent times, the number of consultancy-type arrangements within the UAE has significantly increased for the reasons mentioned below. Over the past couple of years, an excess of USD 3 billion has been raised on the back of technology investments in the region with Careem becoming the UAE's first tech start-up with a valuation of over USD 1 billion at exit.

With the increased focus on investment in the gig economy, more and more individuals are looking to provide their services as freelancers, with the flexibility that this offers to them. The UAE has also recently simplified the process to set up SMEs, which will help entrepreneurs to be their own sponsor for immigration purposes. Free zones have become much more accommodating to the concept of freelancers and contractors can set up their own businesses to render services to other companies. For example, both Twofour54, a media and entertainment free zone in Abu Dhabi, as well as the Dubai Creative Clusters (formally known as TECOM) free zone in Dubai, accommodate freelancer arrangements and have numerous freelancers available for hire who are registered through their databases. Work outside of the free zone is not permitted and as such, there is a limit as to how far this approach can be adopted within other free zones or onshore.

Currently, given the above restrictions, the ability of residents to work flexibly in the UAE remains challenging. However, it is clear that the UAE is accommodating greater flexibility and the trend of flexible working is increasing. As a further example, the Ministry of Human Resources and Emiratization has now established a part-time working regime whereby certain skilled employees are able to work part time for up to two employers. The individual would require a temporary work permit specifically for part-time jobs, and consent of both companies in order to do so.

With employers looking to cut down on permanent employees but retain the flexibility to access certain services when required, flexible working would open up the employer's ability to access a more substantial pool of labour without incurring the same risk and financial exposure associated with hiring full-time employees. Such trends are going to inevitably increase and we are likely to see a parallel development of the gig economy in the UAE as legislative concessions continue in the years ahead.