Tackling labour market violations for atypical work contracts

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*Employment analysis: Research published by Resolution Foundation (RF) has revealed that one in 20 workers in Britain do not receive any of the holiday pay they are guaranteed by law, and that those on atypical contracts—such as zero-hour contracts, external contractor roles, and gig economy—are most vulnerable to labour market violations. Annie Powell, associate at Leigh Day who represented 50 Deliveroo couriers who sought compensation for not receiving the national minimum wage (NMW) and holiday pay in 2018, discusses how the problem begins with some companies violating employee rights to gain a competitive advantage.*

**Original news**

Clarify the laws on employee rights to decrease violations, [LNB News 16/09/2019](https://www.lexisnexis.com/uk/legal/search/enhRunRemoteLink.do?ersKey=23_T28995853376&backKey=20_T28995854422&homeCsi=281953&A=0.19030039240992713&urlEnc=ISO-8859-1&&remotekey1=DIGEST-CITATION(LNB%20News%2016/09/2019%2059)&remotekey2=All%20Subscribed%20Current%20Awareness%20Sources&dpsi=04M5&cmd=f:exp&service=QUERY&origdpsi=04M5) 59

*Research published by RF has revealed that over one million workers in Britain do not receive any of the holiday pay they are guaranteed by law. In the*  [report*, RF*](http://www.resolutionfoundation.org/app/uploads/2019/09/Enforcement-spotlight-1.pdf) *draws a link between the growth of precarious working conditions and the rising scale of violations in the UK labour market. The report findings call into question that the UK legal system relies predominantly on individuals to hold non-compliant firms to account, with more than 100,000 applications made to the employment tribunal system in 2018.*

**The report says that precarious work conditions—such as zero-hour contracts and gig economy workers—**

**are on the rise. What are the potential implications of this on employee legal rights and the labour market?**

In terms of employees’ legal rights, one of the major issues is bogus self-employment. Many gig economy companies falsely label their staff as self-employed contractors and don’t afford them any workers’ rights, even though in reality these individuals are workers or employees who are entitled to the NMW and holiday pay, among other rights.

As to the effects on the labour market, a serious concern is that companies obtain a competitive advantage by acting in this way which is leading to a race to the bottom, with companies in the gig economy unable to compete unless they too deny their staff holiday pay and pay less than the NMW.

Deliveroo is a good example of this. In *Christie & Ors v Roofoods Ltd t/a Deliveroo* (Multiple 2968/Case No

2206555/2017), Leigh Day represented 50 Deliveroo riders in a claim for employment rights (the claim settled in 2018 for a material sum, but with no admission of liability by Deliveroo). Even before taking account of expenses such as bike repairs, one rider was paid £538.14 below the NMW in his first eight weeks of working for Deliveroo. Another rider who worked for Deliveroo for just over a year claimed £2,541.31 in underpayment of the NMW.

Any food delivery company which paid all their staff at least the NMW would be at a clear disadvantage.

**The report reveals one in 20 workers did not receive any holiday pay despite being legally entitled to at least**

**28 days a year. Why are employment right violations so high? What should be done to address this?**

When it comes to holiday pay, employment rights violations are so high because it pays for some companies to act unlawfully.

If a company refuses to pay its workers holiday pay, the only way those workers can enforce their rights is by suing their employer in the Employment Tribunal. Companies know that most workers won’t take that step because its stressful and expensive, and because many workers are not backed by a trade union who will fund such litigation.

Even if workers do sue for unpaid holiday pay, the worst-case scenario for the company is that they lose the case and have to pay the claimants what they should have been paid in the first place. Further, the company may not have to pay the full arrears of unpaid holiday pay—time limit issues can make it difficult to claim for a long period of unpaid holiday pay, and the Deduction from Wages (Limitation) Regulations 2014, [SI 2014/3322 p](https://www.lexisnexis.com/uk/legal/search/enhRunRemoteLink.do?linkInfo=F%23GB%23UK_SI%23num%252014_3322s_Title%25&A=0.33418889428977017&backKey=20_T28995854422&service=citation&ersKey=23_T28995853376&langcountry=GB)rovide that workers cannot claim more than two years of unpaid holiday pay. Leigh Day is currently challenging these time barriers on the basis that they are not compatible with EU law (see *King v The Sash Windows Workshop Ltd* [C-214/16 a](https://www.lexisnexis.com/uk/legal/search/enhRunRemoteLink.do?linkInfo=F%23GB%23C%23sel1%252016%25year%252016%25page%25214%25&A=0.5108569510404871&backKey=20_T28995854422&service=citation&ersKey=23_T28995853376&langcountry=GB)nd *Chief Constable of the Police Service of Northern Ireland (PSNI) v Agnew (Alexander) and Others* [2019] NICA 32).

**RF announced they are about to launch a new three-year research project on labour market enforcement. What do you think this should cover? What do you think needs to change?**

Policy changes could make a huge difference in this area, including the following:

• financial penalties for companies who don’t pay their workers holiday pay. Penalties should be high enough to act as

a disincentive, meaning that it no longer makes financial sense for companies to act unlawfully

• remove the burden of enforcing workers’ rights from individuals by allowing trade unions to bring legal challenges

• establishing a national enforcement body to uphold the rights of workers

• a change to the law on legal costs in the Employment Tribunal, introducing a rule that employers who lose claims for holiday pay or the NMW should pay the claimants’ legal costs. The costs regime as it applies to claimants in the Employment Tribunal should remain unchanged ie the general rule is that the loser does not pay the winner’s legal costs. This would shift the cost of enforcing NMW and holiday pay provisions onto the employers who have acted unlawfully

*Interviewed by Samantha Gilbert.*

*The views expressed by our Legal Analysis interviewees are not necessarily those of the proprietor.*

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