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Uber drivers are employees according to the Paris Court of Appeals!

Message received loud and clear by the Paris Court of Appeals!

In line with the highly noted decision issued on November 28, 2018^[1] by the Labor Chamber of the *Cour de Cassation* (French Supreme court) which, as we commented in December 2018, sent a strong signal to the lower courts by recognizing the reclassification of the agreement between a deliverer and a digital platform as an employment contract^[2], the Paris Court of Appeals held for the first time that the contract binding Uber to one of its drivers ought to be analyzed as an employment contract.

While the Parisian judge had so far been reluctant to recognize a situation of employment between a self-employed worker and a digital platform, he pointed out in a particularly reasoned and detailed decision dated January 10, 2019^[3] that a “*sufficient set of clues*” existed in this case to establish the existence of a relationship of subordination between the Uber platform and the self-employed driver.

Echoing the recent decision of the *Cour de Cassation*, the Paris Court of Appeals first recalled that an employment contract presupposes a relationship of subordination, characterized by the combined powers of direction, control and sanction, before specifying that it was up to the judge to analyze the factual circumstances in which the activity is carried out, regardless of the will expressed by the parties or the designation that the parties have given to their agreement.

The Paris Court of Appeals adopted a two-step approach: Relying on Article L. 8221-6 of the French Labor Code, it first demonstrated the absence of independent activity by the Uber driver (1) before establishing the existence of a relationship of subordination with the platform (2).

1. The Uber driver is not a self-employed worker

The Paris Court of Appeals explained that an essential condition of an independent sole proprietorship is “*the*



free choice that its member makes to create or take over it, in addition to mastering the organization of its tasks, its search for customers and suppliers.”

In the case at hand, it considered that the Uber driver did not fulfil the conditions required to be considered as a self-employed worker, namely:

- The free determination of the conditions for exercising its transport service (entirely governed by Uber, which centralizes and allocates to drivers requests for transport services via algorithms);
- The creation of an own customer base (Uber prohibits the picking-up of other passengers outside the application system, any contact with passengers at the end of the journey or the retention of their personal information); and
- The free setting of prices (fixed contractually through the platform’s algorithms).

2. The Uber driver is bound towards the platform by a relationship of subordination

To establish the existence of an employment contract, the Paris Court of Appeals then identified a relationship of subordination between the Uber driver and the platform, using a number of clues that recall the findings of the aforementioned decision of the *Cour de Cassation*.

As such, the relationship of subordination is characterized by:

- A power of direction (which materialized *inter alia* through the obligation to follow an effective route via the GPS instructions of the application subject to penalty, the obligation to wait 10 minutes for the user to arrive at the agreed place and the obligation to comply with Uber’s behavioral guidelines);
- A power of control (which materialized through a system of acceptance of fares, giving the driver very limited freedom of choice, and through a geolocation system);
- A power of sanction (which materialized through setting an “*order cancellation rate*” per city that can lead to the loss of access to the account, and by a system for reporting “*problematic behavior*” by users, which can also lead to the permanent loss of access to the application).

Uber’s argument that drivers were free to connect and free to choose working hours was, in this case, irrelevant according to the Paris Court of Appeals.

Uber has indicated that it was going to lodge an appeal before the *Cour de Cassation* against this decision.

Finally, it should be noted that the legislator is still expected to tackle this issue.

[1] Labor Chamber of the *Cour de Cassation*, November 28, 2018, n° 17-20.079

[2] Cf. article entitled Reclassification of the contract between a delivery rider and a digital platform: A strong



message sent by the *Cour de Cassation*

[3] Court of Appeals, January 10, 2019, 6-2, n°18/08357

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