

## Employment Update

### Lack of employment relationship of a worker providing parcel delivery and collection services, despite the use of mobile application and clothing made available by the company.

10th June 2019

#### Regarding the Hight Court of Cantabria Judgement dated 26 April 2019

Within the framework of the latest judicial pronouncements regarding the labour status of workers who provide services for collaborative economy platforms, and especially with respect to those dedicated to home delivery, the High Court of Justice of Cantabria, in its Judgement of 26 April 2019, has rejected the existence of an employment relationship of a self-employed worker, even though there are certain indications that have been considered by other courts as characteristic notes of dependency or subordination.

In this sense, to remember that the concurrence of certain factual circumstances, such as the geolocation of the worker, the business organization through mobile applications, the control of the delivery times, or the image of the company towards the client, were considered decisive indications of the concurrence of the notes of dependency and alienation, and therefore of the existence of an employment relationship of those workers who provided home delivery services, even with their own means.

Well, in the case of fact judged by the High Court of Justice of Cantabria, in which the plaintiff provides collection and delivery services at home, with its own means (its own vehicle without the company's logo, compulsory insurance, mobile phone), in which part of its remuneration depends on the number of packages delivered, without being subject to a specific timetable or any exclusivity agreement, and with freedom to determine his holidays (the actor personally hired a substitute to cover the period in which he was on holiday), the Chamber concludes that the presumption of work cannot be applied, in accordance with Article 8.1 of the Workers' Statute.

Notwithstanding the foregoing, and as can be seen from the list of proven facts and from the legal basis of the decision itself, it is established that the plaintiff used an application for the mobile telephone provided by the company for the organisation of work and that, in the view of the Chamber, it is not so much a means of organisation and control of business as a means of control of deliveries for the worker himself.

In addition, it was possible to establish from the evidence that it was possible to operate without such an application, so that its use is not considered obligatory, so that this circumstance is rejected by the Chamber as an indication of dependency, and therefore of work. Likewise, the fact that the plaintiff wore the same clothing as the company's employment personnel is also rejected by the Chamber as an indication of work, insofar as it was proven that the use of this garment was not obligatory, but of optional or voluntary use.

Finally, the fact that the plaintiff was able to refuse the orders proposed by the company is also considered decisive in order to show that it was not subject to any type of organisation on the part of the company.



In short, the freedom and/or discretion, and therefore the lack of obligation on the part of the self-employed worker, with regard to the use of certain means made available by the company, such as the application of mobile telephony for the organisation of orders, or corporate clothing, as well as the power to reject certain orders or orders, constitute a determining nuance, which leads the Chamber to conclude that there are no signs of work, although in another context, these same circumstances if they have been conclusive in applying the presumption of work.

All this would lead to a not merely objective assessment, in relation to the concurrence or not of certain indications, as is the case of the means made available by the company, but to a final evaluation of them, in order to determine the obligatory nature or business requirement with respect to the use of those means, which would give rise to a probative effort of the parties in litigation.

Note the reference made by the commented resolution to the Judgment of the Supreme Court dated 18 July 2018 (Rec. 2228/2015 ), where the High Court recalls that the dividing line between the employment contract and other links of an analogous nature, such as the execution of works, the lease of services, the commission or associative relationship, etc., regulated by civil or mercantile legislation, is not clear, neither in scientific and jurisprudential doctrine, nor in legislation, nor even in social reality.

In effect, the requirements of dependency and others are the characteristic features of the employment relationship. Dependency -understood as the situation of the subject worker, even in a flexible and not rigid way, nor intense to the organicist and governing sphere of the company-, and the otherness, with respect to the remuneration regime, constitute essential elements that differentiate the working relationship from other types of contracts. Ergo, once again the circumstances and specificities of each specific case will have to be considered in order to finally be able to decide on the existence or not of an employment relationship in all types of assumptions underlying this problem.

You can read the [complete sentence](#) for more information

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