

# Pimlico Plumbers decision means more gig economy workers have rights to paid holiday

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The Supreme Court has added to the raft of cases concerning whether staff in the gig economy are workers, and so entitled to paid holiday and limited other rights, or genuinely self-

employed and out of employment protection altogether.

This case concerned a plumber working for Pimlico Plumbers, who claimed that the company had deprived him of a number of employment rights such as paid holidays and sick pay because it wrongly classified him as a self-employed contractor. The factors for the Court to consider were:

- that the plumber, Mr Smith, had to drive a Pimlico Plumbers branded van with a tracker in it, had to wear a Pimlico Plumbers branded uniform, and carry a company ID card;
- he was not under a specific obligation to accept work, and Pimlico was not specifically obliged to provide it, but Mr Smith's contract stated he must work at least 40 hours per week for Pimlico;
- Mr Smith had to provide his own tools and equipment and would not be paid in the event a customer failed to settle an invoice;
- Mr Smith had to secure his own liability insurance;
- he was VAT registered, invoiced Pimlico for his pay, and submitted tax returns to HMRC on the basis of being self-employed;
- there was a contractual right to provide a substitute to carry out the work he had agreed to do, but it was limited only to other plumbers already working for Pimlico; and
- Mr Smith was subject to restrictive covenants under his contract.

The Supreme Court held that Mr Smith was a worker with entitlement to various employment rights. It held that the right to substitute himself for another Pimlico plumber, given that it was fettered, was not enough to prevent there being a personal service relationship – the defining characteristic of worker status. The facts showed that Pimlico had tight control over Mr Smith's working life, which pointed away from Mr Smith being a truly independent contractor.

This case is the first time a gig economy worker status question has come before the Supreme Court, and its decision that Mr Smith was a worker follows the direction of travel set by other cases. That said, the question of employment status is always tied closely to the facts of any given case, such that it does not automatically follow that other gig economy workers have employment rights. More cases are due to make their way through the courts and tribunals in the coming months.

***Pimlico Plumbers Ltd and Mullins v Smith [2018] UKSC 29***

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