Asiantuntijalausunto: Ruokalähettien työ “alustataloudessa”
27.11.2018
Justice4Couriers-kampanja

1. Ruokalähettien työ “alustataloudessa”

- Foodoran ja Woltin lähetit ja autokuskit tekevät työtä **freelancer**- tai **toimeksiantosopimuksilla**
- Tämän vuoksi heillä **ei ole** sairaslomia, irtisanomisaikaa tai vakuutuksia
  - Onnettomuus- tai sairastumistapauksessa lähetti on omillaan
- Lähetit maksavat palkkiostaan itse työn sivukulut (esim. eläkemaksut) sekä ajoneuvojensa ylläpito- ja huoltokulut, puhelimet ja työvälineet reppuja lukuun ottamatta
- **Freelancer-lähettien työ täyttää monet työsuhteen tunnusmerkit**
  - Vuorojen ajankohdan ja keston määrittää yritys
  - Yritys valvoo tarkasti vuoroille saapumista sekä niiden aloittamista ja lopettamista ajallaan
  - Vuoron aikana lähetti ei saa kieltäytyä tilauksista
  - Vuoron aikana ajojärjestelijät ohjeistavat lähettejä
  - Yritys määrittää työalueen ja asiakkaat
  - Lähetit eivät neuvottele kuljetusten hinnoista
  - Foodoralla freelancer-lähetit tekevät täsmälleen samaa lähetin työtä kuin vähemmistössä olevat työsuhteessa olevat lähetit

2. Lopputulema: ruokalähettien työ täyttää työsuhteen kriteerit:

- Läheteillä on työsuhteessa olevien velvollisuudet, mutta ei työntekijän oikeuksia
- Läheteillä on itsensätyöllistäjien riskit, mutta ei aidon freelancerin vapautta
- Foodora ja Wolt **ovat siirtäneet yrittäjäriskin** läheteille

- Foodora, Wolt ja vastaavat ulkomailla toimivat yritykset kuten Deliveroo, UberEATS ja Glovo **eivät ole pelkkiä “alustoja”**, vaan kuljetusalan yrityksiä ja työnantajia
  - Työllistämällä työvoimaa ne eroavat merkittävästi “jakamisalustoista”, kuten asunnonvälityspalvelu AirBnB:sta.
  - Foodoran johto myönsi luokittelleensa **väärin perustein** lähettinsä freelancereiksi Australiassa (ks. LIITE 1)
  - Norjassa kaikki Foodoran lähetit ovat työsuhteessa
  - Espanjassa ruoankuljetusyritys Deliveroo joutui oikeudessa myöntämään, että freelancer-lähetti oli tosiasiallisesti työsuhteessa (ks. LIITE 2)

3. Justice4Couriers-kampanjan suositukset

1. Olemassaolevaa työlainsäädäntöä valvottava ja toimeenpantava tiukemmin, jotta työehtoja ei kierretä valheellisilla toimeksiantosopimuksilla

2. Lainsäädäntöä tulee muuttaa: ehdotus työsuhdeolettamuksesta on hyvä. On lähdettävä siitä, että yritykselle työtä tekevä on työsuhteessa ja poikkeavissa tapauksissa olisi työn teettäjän vastuulla osoittaa, että kyse on freelancer-suhteesta.

3. Aitojen freelancereiden ja itsensätyöllistäjien asemaa työmarkkinoilla on parannettava. Heille tulisi antaa työehtojensa kollektiivinen neuvotteluoikeus ja sosiaaliturvaa tulee kehittää ottamaan paremmin huomioon erilaiset työn muodot.

Nämä kolme ehdotusta eivät ole toisensa poissulkevia, vaan toisiaan täydentäviä. Tavoitteena on aidon itsensätyöllistämisen helpottaminen sen asemaa parantamalla ja ehkäisemällä freelancer-sopimusten väärinkäyttöä.

Puuttumalla alustatalouden haasteisiin, parantamalla työntekijöiden oikeusturvaa ja ehkäisemällä alustojen väärinkäyttöä, Suomi osoittaa olevansa myös kansainvälisesti edellekävijä, kuten esimerkiksi Australia.

4. Justice4Coueris-kampanja:

- Kesällä 2018 Helsingissä, Tampereella ja Turussa toimivien Foodoran pyörälähettien ja autokuskien aloittama kampanja . Syksyllä 2018 Woltin lähettejä liittyi kampanjaan
- Tavoitteena palkkionalennusten peruminen sekä työehtojen ja -olojen parantaminen Foodoralla ja Woltilla

LIITE 1

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Justice4Couriers-kampanja

Foodora administrators admit 'misclassified' delivery riders underpaid $7.5m

David Marin-Guzman

Financial Review 8.11.2018

https://www.afr.com/news/policy/industrial-relations/foodora-administrators-admit-misclassified-delivery-riders-underpaid-75m

Foodora's administrators have admitted the gig company misclassified thousands of food delivery riders as independent contractors instead of employees, underpaying workers more than $7.5 million in wages and superannuation.

Worrells administrators released a report to creditors on Thursday that said after significant consideration and expert legal and accounting advice, it had acknowledged Foodora engaged its 5000 riders on sham contracts.

"We have now reached the position that, on the basis of the information available at the date of this report, it is more likely than not that the majority of the delivery riders and drivers should have been classified as at least casual employees of the company rather than independent contractors," the report said.

While cautioning that each rider should be reviewed on a case-by-case basis, the administrators calculated that Foodora had underpaid riders by $5.25 million if they were assumed to be casuals.

That amount climbed to $5.55 million if, as per the data, about 25 per cent of riders should have been paid as part-time or full-timers with redundancy, annual leave and other entitlements.

In addition, the Australian Tax Office has calculated that Foodora owes workers $2.14 million in superannuation payments.

Delivery Hero's $3m proposal

Foodora announced its exit from Australia in August after its parent company Delivery Hero said it wanted to focus on more profitable markets.

Days later the ATO notified the company that it had determined its riders were employees, not contractors, and that it owed millions in dollars in pay-as-you-go tax and superannuation.

Delivery Hero then cut financial ties to the company, including withdrawing a "letter of comfort" for financial assistance during the administration.

Worrells' report revealed that Delivery Hero has now offered $3 million to settle its debts, which falls to $2.6 million after payments to administrators.

The administrators encouraged creditors to accept the offer as they said there was a high degree of uncertainty about pursuing the Germany-based company for more money.

So far two delivery riders have filed claims against the company totalling $85,320 but more are expected.

The report said that Foodora had initially engaged its riders as independent contractors following legal advice but that "to date, we are yet to sight any legal advice that confirmed the company's position in this regard".

ATO pursues directors

The federal government could end up picking up $1.57 million of Foodora's wage bill, with the report finding 30 per cent of the riders were Australians entitled to claim their unpaid wages under the Fair Entitlements Guarantee.

Revenue NSW has also claimed $558,074 in unpaid payroll tax while Victoria and Queensland Revenue are also investigating what is estimated to be $400,000 in unpaid payroll taxes.

The report said the ATO has issued penalty notices to several current and former directors of the company, which would hold them personally liable for parts of the debt.

However, Foodora's only Australia-based director is Lisa Bushnell, a 23-year-old accountant who has since moved to Germany.

Three of the company's directors were also never registered with ASIC despite their appointment in mid-2015.

Those directors, Philip Lederer, Manutea Dupont and Bastian Stohr, sought to resign a few months after their appointment but were told by company accountants that they did not have to resign because ASIC was never notified, the report said.

'World first': union

The Transport Workers Union said the company's admission about misclassification was a "world first" and confirmed unions' claims for years that gig workers deserve minimum pay and other entitlements.

"This is an important day for workers not just in Australia but worldwide," TWU national secretary Michael Kaine said.

"Never before has a major company in the on-demand economy admitted that its workers have rights in this way."

He criticised Delivery Hero's $3 million offer and said the union would continue to pursue the parent company, which this week lifted its global revenue forecasts to more than $1.2 billion.

Creditors will meet on November 16 to vote on the administrators' proposals.

LIITE 2

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The National 8.11.2018

https://www.thenational.ae/world/europe/deliveroo-rider-recognised-as-employee-by-spanish-court-1.789583

Deliveroo rider recognised as employee by Spanish court

Ruling sets a precedent recognising unfair dismissal of Deliveroo staffer

Deliveroo riders should be treated as employees and not as self-employed, a Spanish court ruled, setting the first European precedent on the rights of the food courier group’s staffers.

Valencian delivery man Victor Sanchez had appealed a decision by Deliveroo for unfair dismissal. The Valencia court said Deliveroo should have treated him as an employee and not a self-employed contractor, the court’s 27-page ruling said.

“We should conclude that there is an employment relationship between the parts (rider and company),” the ruling said, adding that “therefore, the dismissal was inappropriate.”

The company announced Monday that it would waive its appeal and pay the plaintiff nearly 700 euros.

Deliveroo and other groups in which temporary positions and short-term engagements are common are embroiled in legal action over labour rights in a series of countries.

Opposing partisan viewpoints see this either as a working environment that offers flexibility, or as a form of exploitation with very little workplace protection.

This so-called gig-economy, such as those companies like Uber and Deliveroo depend upon, are now under close scrutiny regarding the workplace rights of millions of employees.

Intersindical Valenciana, a local union which brought that case forward, welcomed the ruling, which is the first in Europe.