

# COMPLIANCE RISKS<sub>and the</sub> GIG ECONOMY



VinçiWorks  
eBook

From renting a room through AirBnB, selling a service on UpWork, or hailing a ride on Uber, casual labour without commitment, known as the gig economy, can be a compliance conundrum for business.

The benefits of gig economy providers are that they are often quicker, cheaper and more flexible than their traditional counterparts. The downside is a major compliance nightmare for business.

From underpaying workers, wrongly classifying them, not providing sick or holiday pay, not paying taxes or national insurance contributions, and even concerns over modern slavery; casual labour with no strings attached can come at quite a cost.

This guide is intended to provide an overview of some of the major compliance risks that come with interacting with the gig economy, and help companies make smarter decisions about using the gig economy.

# GLOSSARY



## GIG ECONOMY

Temporary needs are filled by independent workers for short term engagements connected through a technology platform.



## SHARING ECONOMY

Individuals borrow or rent assets for a short term owned by someone else.



## INDEPENDENT WORKFORCE

A provisional group of workers operating on a temporary basis.



## INDEPENDENT WORKERS

Giggers, or freelancers, temporary workers, independent contractors, or consultants who work in the gig economy.



## TRADITIONAL WORKER

A salaried worker with a traditional employer-employee relationship.



## FREELANCER

Someone who is self-employed and not committed to one particular employer.



## DIGITAL PLATFORMS

An online intermediary or marketplace that connects service providers to those who require their services.



## TAX HAVEN

Generally a small, stable territory with very low tax rates and secretive business practices.



## ZERO HOURS CONTRACT

A contract that provides no minimum hours and no guarantee of work.



# SPEED READ

The gig economy means any short term transactional relationship, usually done through an app. This could include ordering an Uber or buying something from eBay.



# What are the major compliance risks?



## **Tax**

Underpayment or underreporting of tax, national insurance, or VAT



## **Worker classification**

"Fake" self-employed workers or denying legal rights to holiday pay or overtime

## **Minimum wage**

Failure to pay minimum wage down the supply chain

## **Supply chain**

Lack of due diligence, little transparency over suppliers and modern slavery concerns

## **Litigation**

Lack of oversight could lead to greater risk of being sued



## **Data security**

Information breaches, unsecured systems and mishandling personal information

## **Business continuity**

Over-reliance on temporary unsecured labour

## **Equality and discrimination**

Inadvertently discriminating against workers or customers

## **Immigration checks**

Employing workers with no legal right to work

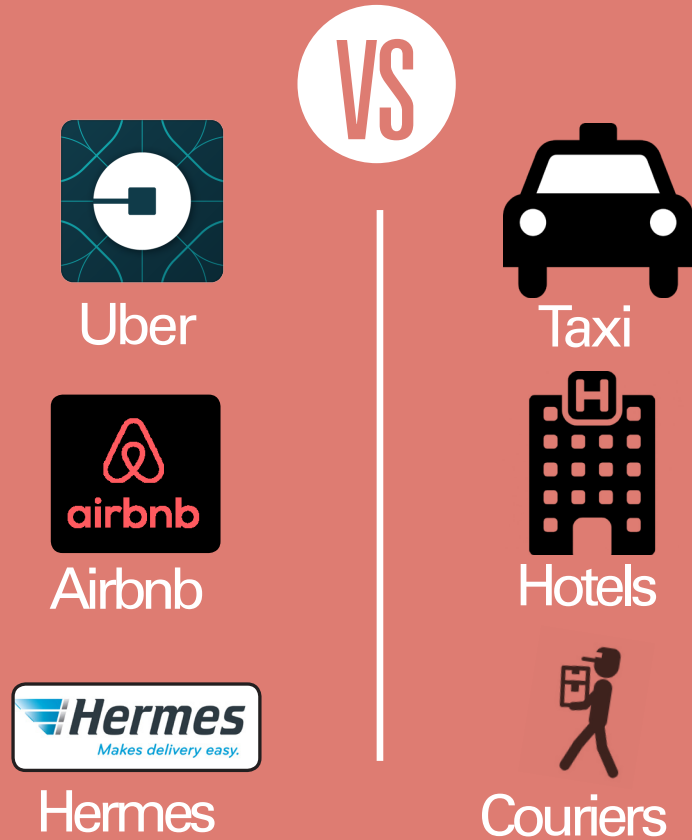
## **Training and compliance**

Workers in the supply chain without training or commitment to company policies



# What is the gig economy?

The gig economy, where individuals undertake short-term, task based engagements on a temporary basis, is revolutionising and disrupting various parts of the traditional economy.



A growing number of digital platforms are connecting independent workers to jobs which need to be done.

The gig economy is distinct from the sharing economy, where individuals borrow or rent assets short term that are owned by someone else.

### **A high degree of autonomy**

Workers are able to exercise control over their workload and their clients. They can decide which assignments to accept or reject, and can complete the task whenever and wherever they decide.

### **Payment by task**

Independent workers don't earn a fixed salary, and are paid by the hour, day, contract, or task. The income is dependent on the amount of work performed, as opposed to time spent working.

## **3key features define**

# **INDEPENDENT WORK**

### **Remember:**

Under UK employment law, after 12 weeks, agency workers are entitled to the same basic conditions of employment including pay, holiday pay and working time rights.

Agency workers are entitled to access the same facilities as regular employees such as canteens, childcare and transport from day one.

### **Short-term relationship between the worker and the client**

The working relationships tend to be short term, and exist as long as the contract does. While some independent workers may have longer-term relationships with some clients, each time a service is provided is a discrete event which is separate from a longer term business relationship.

# What makes the gig economy work?





# Why it's a problem:

Using the gig economy for business can  
complicate your supply chain



Independent workers aren't  
usually vetted or trained



It can leave your business vulnerable  
to compliance problems

# What you should do:



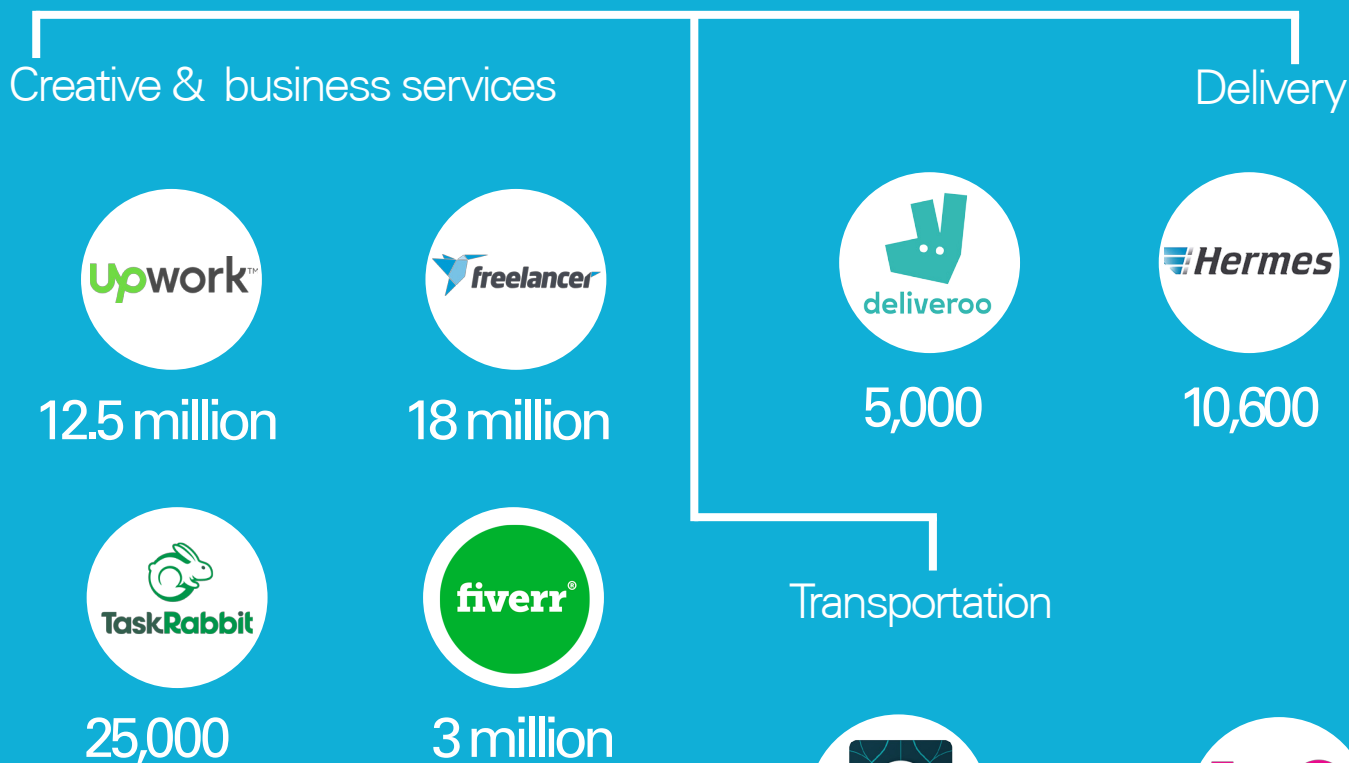
Treat any gig  
supplier like a  
regular supplier

Undertake  
appropriate due  
diligence as you  
would with any other  
supplier

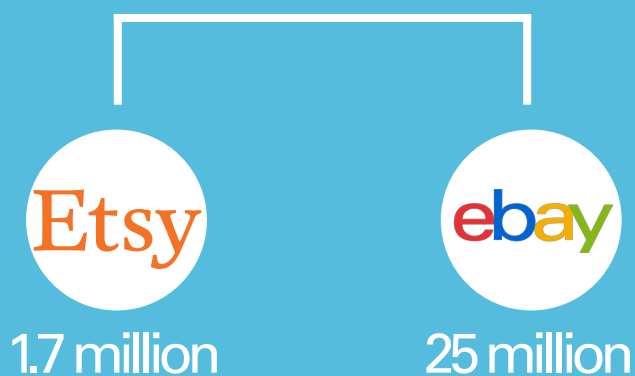
If in doubt,  
don't do it

# Numbers of workers per digital platform

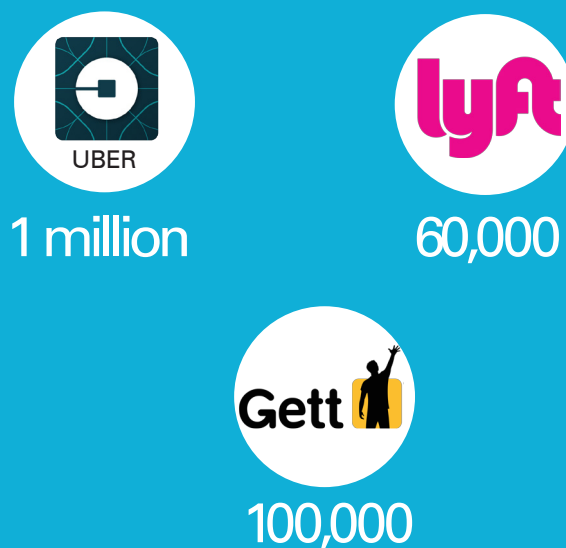
## PROVIDING LABOUR



## SELLING GOODS



## Transportation



## LEASING ASSETS



# UK segments of independent workers

30%

## FREE AGENTS

They actively choose independent work and derive their primary income from it. They report high satisfaction with their work lives, generally higher than in traditional jobs.

40%

## CASUAL EARNERS

They use independent work for supplemental income by choice.

14%

## RELUCTANTS

They derive their primary income from independent work but would prefer a traditional job.

16%

## FINANCIALLY STRAPPED

They do independent work out of necessity and are generally dissatisfied with their treatment.

In the UK this translates to:

4 million

free agents

6 million

casual earners

2 million

reluctants

2 million

financially  
strapped

# What are the workers?

What employment classification independent workers should have is one of the most difficult issues facing the gig economy. Start-ups want to minimise their costs and responsibilities, the tax authorities want to make sure workers are paid what they are due, and much of the public wants a fair deal for workers. In light of the Uber employment tribunal ruling in 2016 which stated Uber drivers are regular workers, not self-employed, the HMRC announced a new gig economy compliance team to look at the issues surrounding independent workers.

There are three main types of classifications of workers. Each classification affords varying rights, from employee to self employed.

Classification	National Minimum Wage	Holiday pay	Sick pay	Time off for emergencies	Unfair dismissal protection	Protection from Discrimination
Employee	Yes	Yes	Yes	Yes	Yes	Yes
Casual Worker	Yes	Yes	No	No	Yes	Yes
Self-employed	No	No	No	No	No	In some cases

# 8 WAYS THE GIG ECONOMY CAN THREATEN YOUR BUSINESS

1. Discrimination
2. Tax evasion
3. Modern slavery
4. VAT fraud
5. Minimum wage
6. Zero-hours contracts
7. Right to work
8. Data protection

# SCENARIO1

## Ridesharing apps discriminating against disabled people

A call centre reimburses staff for any out of hours travel to and from its office. In an effort to reduce costs and improve efficiency, it mandates that staff only use Uber instead of private hire taxis, as it will save around 40% on travel costs. A staff member who is an electric wheelchair user is regularly refused access by Uber drivers who claim their cars cannot take wheelchair users and they are not trained in moving and handling.

The call centre's policy in only reimbursing Uber receipts and not private hire taxis could potentially be discriminatory. The call centre would have to make a reasonable adjustment to the policy to ensure the disabled staff member can take a taxi. Even if this adjustment is made, it could still leave the company vulnerable to disability discrimination due to less favourable treatment of disabled workers, such as being set less night shifts due to increased transport costs, or the perception that any staff member who takes a taxi instead of an Uber is disabled.

While taxi firms are covered by equality legislation, the law is less clear with gig economy providers. It may be more complex to take a discrimination case against a "self-employed" gig economy worker than a traditional company, and the gig economy worker may be less aware of their legal duties under the Equality Act.

### IN THE NEWS

- [Uber driver fined after refusing to take guide dog.](#)
- [NHS trust may use Uber taxis to transfer non-emergency patients](#)

### What to do

Use a policy tracker to ensure equality policies are up to date and staff are aware



# SCENARIO 2

## Suppliers evading tax



A technology company outsources the development of a new software package to a freelancer. The freelancer requests payment through a company which is registered in the British Virgin Islands, a known tax haven, which the technology company is now associated with.

### IN THE NEWS

#### ■ Offshoring and tax dodging

### What to do

Train staff on tax evasion and manage tax affairs within HMRC guidelines

Freelancers and consultants are responsible for settling their own tax affairs, and when working with a British-based freelancer based in the same country, there should be a reasonable assumption that they are properly registered with the tax authorities. The global nature of the gig economy means that freelancers can be hired anywhere in the world and undertake major pieces of work without ever meeting their employer face to face. While ensuring tax compliance of freelancers may not be the responsibility of the technology company, by paying a freelancer through a non-traditional method, they are associating themselves with a potential avoidance scheme.

There is significant public and regulatory pressure on the biggest names in technology, including Amazon, Apple, and eBay, all of whom are based in deliberately low-tax countries. While they save billions, this also opens them to significant criticism and legal action.

# SCENARIO 3

## Purchasing items on eBay from a seller committing VAT fraud

A small business is furnishing a new office. It finds a range of office furniture and supplies at a very reasonable price on eBay. The business requests a VAT receipt from the seller. After purchasing the products and seeking to claim the VAT back, the business discovers that the seller provided a fake VAT number and is no longer on eBay.

Purchasing second hand goods from unknown sellers online leaves much room for error. While online sites such as eBay provide seller ratings which can give some indication of the seller's trustworthiness, other sites like Craigslist or Gumtree may not offer the same kind of detailed information. Purchasing second hand goods online without detailed knowledge of their source could also raise the possibility that the goods were stolen, and could be seized under the Proceeds of Crime Act.

As of 2015, non-EU sellers can no longer avoid VAT compliance by setting themselves up in a low VAT rate jurisdiction. All sales of digital services must be taxed according to the location of the consumer.

VAT fraud is rife online, with over £1bn missing in tax from foreign sellers setting themselves up on eBay and Amazon without including VAT in the products. Goods are supplied and transported through the UK and are subject to VAT.

### IN THE NEWS

- **Amazon and eBay sellers' VAT fraud rife despite crackdown**

### What to do

Undertake proper auditing and management of suppliers





# SCENARIO 4

## Renting an Airbnb that is serviced by workers held in modern slavery

A law firm is arranging a place to stay for one of its clients who is coming in from abroad. It books an Airbnb in walking distance from the office. The Airbnb is run by a management company which looks after and lets out the property professionally. After staying at the property, the client tells the law firm about the cleaners who were there, saying they didn't speak any English, seemed very afraid of their managers, and exhibited signs of being mistreated.

Over the last few years, hotel chains have given considerable attention to addressing modern slavery concerns in their workforce. This includes improving standards and procedures and implementing policies to reduce the potential for labour exploitation. Often this can come from agency staff that the hotel uses, and due diligence policies and approved suppliers can mitigate these risks.

Airbnb is challenging the traditional hotel industry around the world. While designed for people renting out a room or apartment, the platform also contains commercial operations who rent out a larger number of properties. These businesses are often small, and may not have to report on compliance with the Modern Slavery Act as a larger hotel chain must.

### IN THE NEWS

- Modern slavery in the travel industry.

### What to do

Consider your legal requirements under the Modern Slavery Act and put staff through training

# SCENARIO 5

## Using a supplier that does not pay national minimum wage

A landscaping company which does a lot of work for local authorities is an accredited living wage employer. Last year the company began using Hermes, a gig economy company, as its courier provider instead of DHL to reduce costs. The contracts the landscaper has with local authorities mandate that all third party suppliers it works with pay the living wage. In light of HMRC's inquiry into Hermes for paying its drivers less than the minimum wage, the company is worried about the impact of continuing to use Hermes.

Increasing numbers of public procurement contracts contain living wage provisions. The national living wage, set at a higher rate than the national minimum wage, gained in popularity in recent years before being endorsed by the government in 2015. The national living wage, the minimum amount required for a person to live on, is being brought into force for workers over 25 and is set to rise to £9 per hour by 2020.

Many gig economy companies are facing legal action from workers who are not being paid the national minimum wage, let alone the living wage. Gig economy couriers are often paid by delivery, despite having to be available to make deliveries during certain hours, as well as providing their own equipment and not being entitled to holiday or sick pay. An increasing number of legal judgements are dismantling the "fictitious" nature of self-employment, which may require wholesale reorganisation of the gig economy to pay the living wage.

### IN THE NEWS

- [Living wage provisions in public procurement contracts](#)

### What to do

Check the pay and conditions of all third party suppliers and consider binding rules in contracts.





# SCENARIO 6

## The risk of alternative employment practices

A manufacturing company is expanding and needs to hire extra warehouse workers. Instead of going through a recruitment agency and paying agency fees, it engages a number of gig workers for specific tasks through an app. The workers are not reimbursed for travel time and are only paid by task, not by hour, but must stay on site for the next job to come in. A number of workers eventually bring a case against the manufacturing company for illegal working practices and paying below the minimum wage.

### IN THE NEWS

- **Revealed: how Sports Direct effectively pays below minimum wage**

Beyond the impact of the gig economy itself, there has been a general 'gigification' of employment practices towards more temporary, unstable work, in particular the growth of zero hours contracts. This has resulted in various court judgements against major companies such as Sports Direct, and investigations by the media, HMRC and parliament as a result of these scandals.

The gig economy makes it easier than ever to circumvent employment laws for those who want to. A supply of cheap, casual labour may be useful in some circumstances, but this often takes advantage of legal loopholes. Even if the relationship between the employer and the worker is mutually beneficial, it can still lead to non-compliance and potential exploitation.

### What to do

"Check the employment practices of all parts of your supply chain and be aware of gig economy warning signs."

# SCENARIO

## 7

### Hiring someone without the legal right to work

A garden centre manager hires five gig workers through an app to help get the store ready for selling Christmas trees. It's a one-day job that includes moving and lifting, clearing the area, and bringing the trees in from the delivery trucks. The garden centre provides the workers company branded jackets and gloves for the job. A supervisor from the head office makes a visit and asks about the workers setting up the Christmas trees. The manager explains they were hired through an app and are paid only for the task, making a considerable saving. The supervisor asks the gig workers about their right to work, and only two out of the five can prove their right to work.



Knowingly employing someone with no legal right to work or failing to check their immigration status is a criminal offence in the UK and illegal in most jurisdictions. Generally it is not practical to check a person's immigration status before hiring them as a gig worker. The apps tend not to enable much communication prior to the service being bought and paid for, and the transaction may last such a short time anyway that it can't be done.

However this does not solve the problem of ensuring that gig workers have the legal right to work. It will take further judgements and regulation, but the general direction of tribunals thus far has been that gig workers are workers, and therefore subject to immigration rules just as they are to minimum wage laws and holiday pay. Further questions remain on the liability of employing someone without the legal right to work through a gig app. Is it the fault of the app, who facilitates the temporary employment and handles the payment, or the third party who derives benefit from illegal workers?

Nevertheless, a company is obligated to know that someone it hires, whether they are an independent contractor or salaried worker, has the legal right to work.

#### IN THE NEWS

- Gig economy employers should consider right to work checks

#### What to do

Always check the immigration status of every worker who is hired, no matter the size of the job.

# SCENARIO

## Putting sensitive data at risk

An interior design company outsources some of its email direct marketing through gig economy apps, and ends up sending customer data to gig workers all over the world. Many customers of the interior design company complain of being swamped by unwanted marketing and it turns out their details have been hacked and sold on many times.



Data protection laws, including the EU's new General Data Protection Regulations (GDPR), are only getting stronger and can impose severe penalties on companies that fail to keep personal data about their customers safe. Unwanted marketing, sending data outside the EU without consent or failing to stop data being stolen or sold on are serious data protection breaches.

Some gig economy workers may be much less likely to know or care about data protection which can present a major compliance problem. Maintaining transparency over the supply chain and where data is sent to becomes increasingly difficult when subcontracting to anonymous workers online.

### IN THE NEWS

- Most young gig economy companies way behind on protecting user data

### What to do

Train staff on data protection and ensure you are compliant with GDPR

# What the gig economy means for compliance

Due diligence is much more complex with the gig economy. Business will not necessarily have a say in who the worker will be that the app provides, or if the worker pays their own tax, or even if the person has the legal right to work. Consider what the policy of the company is in regards to suppliers.

## MUST

they meet certain minimum standards, such as paying the minimum or living wage



## MUST

they ensure an adequate level of support for their workers, such as sick and holiday pay, and fair working practices



## MUST

they adhere to the letter and spirit of the tax code, and be able to provide audited accounts if required



Until a further determination is made by Parliament, HMRC, or a court or employment tribunal, using gig economy workers will make them part of a company's supply chain, and potentially even the workforce. The same due diligence and care should be exercised when employing a gig worker as it would to a contracted worker. Suppliers and subcontractors should also be sure to exercise similar safeguards in their own use of gig workers.

# Questions to consider before using the gig economy

Use your answers to assess the compliance risks of using gig workers.

- Can the work be performed in-house?
- Is this a recurring task?
- Can a regular worker complete the task?
- Can a traditional company complete the task?
- Is the digital platform trustworthy?
- Is a receipt provided?
- Is the payment made through a secure, trusted system?
- Do you know the worker's immigration status?
- Is there a risk of breaching equality laws?
- Will the worker be paid the national living wage or equivalent for the amount of time they are spending on the task?
- Is the worker registered with the tax authorities?
- Does VAT need to be charged for the service?
- Does your company have minimum standards for suppliers and contractors, including compliance with equality and other laws?
- Do the benefits of using the gig economy outweigh the risks?

# About VinciWorks

Compliance suite

Risk register, risk management systems

Modern slavery training