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NEWS REPORT

Country:	United Kingdom
Title:	Supreme Court ruling on worker status for protection under Equality Act 2010.
Date:	27 June 2018
Expert:	Lucy Vickers
<u>Context</u>	
Issue at stake:	How should courts distinguish between self-employed and employed status for the purposes of the coverage of the Equality Act 2010?
Ground of discrimination:	All grounds
Source:	National court decision, Pimlico Plumbers Ltd and another v Smith [2018] UKSC 29
Field:	Employment
Applicable law:	Equality Act 2010

Content

Case: Gary Smith worked for Pimlico Plumbers as a plumbing and heating engineer from 2005-2011. In August 2011, Mr Smith issued proceedings against Pimlico Plumber alleging among other things that he had been discriminated against on grounds of disability. In order to be able to take forward his claim under the Equality Act, Mr Smith needed to show that he was working under a contract of employment, a contract of apprenticeship or a contract personally to do work (section 83(2)(a) Equality Act 2010).

The contractual terms under which he worked were not clear regarding his true employment status. Although his contract contained terms which might suggest self-employed status, other terms suggested that Mr Smith had the status of employment which was required for the purposes of a discrimination claim.

The employment tribunal held that although Mr Smith had not been an employee in the sense required to claim certain employment rights such as unfair dismissal, he had been in employment for the purposes of section 83(2)(a) Equality Act 2010. This meant that Mr Smith could continue with his discrimination claim. The Appellants appealed this decision to the Employment Appeal Tribunal and then to the Court of Appeal, but were unsuccessful. They then appealed to the Supreme Court.

Decision of the Court: The Supreme Court confirmed that the Employment Tribunal was entitled to find that Mr Smith was employed within the meaning of the term in the Equality Act 2010, as Mr Smith's was contracted to undertake to personally perform his work or services for Pimlico Plumbers. He could therefore continue with his disability claim.

Key points of analysis: The case is important for those who work under contracts which are drafted in terms of self-employment, in particular in the 'gig' economy. If claimants are not deemed to have the correct employment status, then they are not protected under the Equality Act. This can create a situation where those who have contracts stating that they are self-employed are denied protection from discrimination, even though they in fact have the status of employment for the purposes of the Equality Act 2010.

The decision on employment status is very dependent on the facts of the case. Terms in the contract may suggest self-employment, in order to avoid protection from employment and equality laws. But the Court looked at all the contractual terms, and also the practice of the parties in order to find employment status for the purposes of equality law. For example, although the contract allowed a right to substitute a different person to perform the work, in practice Mr Smith was limited in the extent to which he could appoint a different person to carry out work. This pointed towards him having the status required to be protected by the Equality Act. Similarly, although the contract stated that as a self-employed person Mr Smith was free to reject work, and his work was not supervised by Pimlico Plumbers, and in practice Pimlico Plumbers retained close control of Mr Smith's work, requiring a branded uniform and van, use of a tracker and an identify card. Taken together the terms of the contract and their practical implementation entitled the tribunal to conclude that Mr Smith was not an independent contractor, but instead was employed under a contract personally to do work, and therefore covered by the provisions of the Equality Act 2010.

Internet link source: <http://www.bailii.org/uk/cases/UKSC/2018/29.html>. Accessed 19 June 2018.