

PUTTING IN A SHIFT

Freelance work is increasing in today's so-called gig economy. David Adams looks at what this means for businesses and those who work for them



The gig economy has always been with us. In the past, labourers and skilled craftspeople were often paid by the day. In the present day, a huge range of casual shift workers and skilled freelance professionals work in every industry sector, from catering to the media, from logistics to financial services, the public sector and the third sector.

About 4.6 million people in the UK are now self-employed, according to the Office for National Statistics (ONS). That is about one million more than in 2006. But, the percentage of self-employed workers within the total workforce has risen quite slowly, from 13.4% in 1996 to

14.9% today, according to Work Foundation research/ONS figures. What has changed is that it is now easier to become a freelance worker, and freelancers are often easier to find and hire, thanks to social media, freelance forums and the changing attitudes in the workplace.

Being a contractor or freelancer is both liberating and risky, and to some extent that's true for employers too - there are two sides to the story.

LOOK ON THE BRIGHT SIDE

The advantages are obvious. "The freelancing model helps firms access expertise in a flexible way, helps them manage peaks and troughs in demand for their services, test out new ideas without large fixed costs and grow cautiously without over-extending themselves," says Adam Waters, senior policy adviser at the Association of Independent Professionals and the Self-Employed. Besides a full-time salary, the expense employers save when using freelancers instead of permanent staff include employers' national insurance contributions and

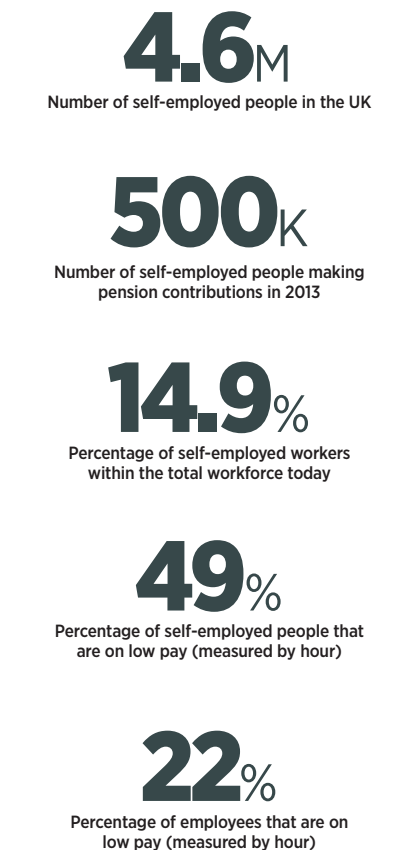
the costs of training, administration, pension contributions and providing other employee benefits.

But the gig economy has also attracted negative publicity, with some employers being accused of exploiting workers. In October 2016 an employment tribunal ruled that Uber drivers should be considered as 'workers', not self-employed contractors, so should be entitled to rights including being paid minimum wage, annual leave and other protections. At the time of writing, Uber is appealing the judgement.

About 49% of all self-employed people are on low pay, as measured per hour, compared with 22% of employees, according to the Social Market Foundation. There has also been a fall in the number of self-employed people making pension contributions: down to just 500,000 by 2013 compared with 1.1 million 10 years earlier, according to the Resolution Foundation. These figures suggest that many gig economy workers are more likely to be relying on uncertain and irregular sources of income than to be skilled contractors moving from one lucrative assignment to the next.

The Work and Pensions Committee is currently consulting on self-employment and the gig economy; the Business Energy and Industrial Strategy Committee (BEISC) has just closed a consultation on the future world of work and the rights of workers; and the Royal Society for the encouragement of Arts, Manufactures and Commerce chief executive Matthew Taylor is leading an independent review of employment practices for the government. The way contractors and freelancers are treated within the tax system is also being reviewed. It seems likely that legislative and/or regulatory change will come in the near or medium term, making it even more important that employers follow best practice when working with gig economy workers and contractors.

The willingness to use freelancers varies hugely by sector and from one employer to another, but does seem to have increased overall, suggests Dave Chaplin, CEO and founder of Contractor Calculator, which provides products and services to contractors working in different sectors. He believes the change has been driven in part by the development of online



job marketplaces like Upwork, freelancer.com and industry-specific websites that make it easier for employers to find freelancers. Some employers can also benefit from hiring offshore freelancers who may work for lower pay.

There are also now services that will help employers to meet more complex employer needs, matching them with suitable contractors. For example, Brainbroker enables access to a network of freelance experts in digital, online marketing, website design and other related skills, along with relevant software tools.

BEING REALISTIC

But there are disadvantages. The cost benefit is not always so clear and costs can escalate if contractors are being paid hourly or day rates and a project is delayed. One almost universal source of problems is a lack of clarity when an employer explains what they want. "If the requirements and the brief are vague you'll end up with an unhappy client and an unhappy contractor," Chaplin warns.

There also has to be clarity around payment. Brainbroker co-founder

CASE STUDY: IDEAS MADE

IDEAS MADE

London-based marketing company Ideas Made uses freelancers regularly in a number of different roles, though it still prefers to use in-house personnel if possible.

Partner Ross Tavendale says the most important advantages of using freelance workers are the flexibility and the specialist knowledge.

"Using copywriters as an example, a project will only usually require a copywriter every few months to help build campaigns or write specific pieces of copy, so having a full time copy staff doesn't make sense," he explains. "Also, some of our clients, such as law and finance firms, need highly specialised knowledge in order to produce good quality copy, so it pays to hire a specific legal copywriter to complete the job to the highest standard. And if you have lots of freelancers on your payroll, you can easily scale up projects and take on higher-paying work without a huge payroll liability on your balance sheet."

Disadvantages include the occasional culture clash and an understandable but still potentially problematic lack of loyalty to the organisation. "With freelancers there is no company loyalty so there is no guarantee that they will [always] be available to work on your project," says Tavendale.

Costs employers save when using freelancers include NI contributions, the costs of training, administration and pension contributions

Jonathan Lemer suggests employers should be open-minded about whether to pay by the hour, shift, day or project: all can be valid approaches, all have advantages and disadvantages.

An employer's room to manoeuvre will depend in part on the way market forces act in a given sector. For some roles, such as in specific areas of IT, engineering or professional services, the most highly skilled contractors often have the upper hand over employers in negotiations, Chaplin reports. In others, such as oil and gas, buyers have more control over the market.

IT'S NOT FOR EVERYONE

At the extreme end of the scale, some freelancers do not really want to be freelancers. In its written response to the BEISC consultation, submitted in December 2016, Contractor Calculator railed against "false self-employment" being exploited by employers, citing examples including warehouse staff fired then rehired on a piecemeal basis with no employee rights or benefits. "A person doing multiple gigs for the same firm day in and day out is a 'worker' under employment law, as the Uber case perfectly highlighted, and they should have protections," wrote Chaplin in the response document. "We need legislation that makes this clear."

The gig economy doesn't suit everyone. What feels like freedom to some workers is a frightening lack of security for others. There is a good reason why so many of us were advised by family members or teachers to get "a good, steady job". Nor is every job suitable for a freelancer. But where working with a freelancer is an option, employers must choose their freelancers carefully, seek clarity over what each party should expect from the other and, above all, ensure that all regulatory and legislative conditions are met in full. ■



WHEN IS SOMEONE SELF-EMPLOYED, EMPLOYED, OR A 'WORKER'?

In law, broadly speaking, for a worker to be "employed" they must provide their services personally and submit to the right of control by their employer over how, what, where and when work is completed. Their relationship must also be subject to "mutuality of obligation" – the worker must work to be paid and the employer must pay the worker for work done.

If any of those conditions are not met, the individual worker is not an employee. If all three are met they may be an employee if secondary tests are also met, including whether the worker provides the tools of their trade, are exposed to financial risk or if they work mainly for one client.

"Worker" status in EU and UK law guarantees rights to individuals who are not employees or self-employed. Worker status does not determine tax status but does guarantee the right to be paid the minimum wage, to holiday pay, to auto-enrolment pension contributions and to protection from unlawful deduction of wages, unlawful discrimination and unfair treatment if the individual becomes a whistleblower.

Mark Groom, an employment tax partner

at Deloitte, suggests that recent employment tribunal case law suggests "that the only individuals excluded from the definition of 'worker' are contractors who have a sufficiently arm's length and independent position, to be treated as being able to look after themselves in the relevant respects... It is possible that large numbers of gig-economy workers would be classified as workers under this definition," he says. HMRC have provided a useful tool to ascertain the likelihood of status at tinyurl.com/GOV-EmpTest

Employers should also be certain that all relevant rules are complied with if they engage a contractor who owns a personal service company. If application of the tests above shows that an individual would in effect be employed for a specific engagement, the IR35 tax regime – an anti-tax avoidance measure introduced to stop contractors hiding employee status to avoid tax – applies. From April 2017 public sector organisations will bear the responsibility for establishing whether or not this is the case. It is possible that private sector employers will also bear this responsibility at some point in future.