

November 2019

Employment Law Department

NEW PRONOUNCEMENT ISSUED BY A HIGH COURT OF JUSTICE ON THE NATURE OF RIDERS RELATIONS

A new ruling has recently been handed down on the relationship between riders and digital platforms. This time, the pronouncement of the **High Court of Justice of Madrid ("TSJ¹") in judgment No.715/2019 of 19 September** comes hard on the heels of a diametrically opposed pronouncement from the Asturias TSJ, Companies Division, which was commented on our **LN October 2019**.

The Judgment in question deems **the relationship to be commercial in nature**. The Companies' Division dismissed the argument centred on the simultaneous existence of proprietary notes referring to the employment law relationship between the delivery person and the Company (GLOVO, in the case heard in Asturias). The main grounds on which this new judgment is based, inter alia, are as follows:

- (i) Riders can **decide the hours** they wish to work, except the business activities start and end times.
- (ii) They are at **liberty to accept or refuse slots** (orders) as best suits them with no established minimum hours requirement and can also choose the delivery route.
- (iii) **Riders are not required to have employees** for whom they are responsible in order to perform the business activity and **provide their own material resources** in order to perform the business activity.
- (iv) **No form of exclusivity agreement is signed by and between the parties**, who always adhere to the limits established in the TRADE definition. Equally, **riders are not obliged to explain absences** and are only obliged to give advance notice.
- (V) The rider **assumes liability for proper service provision**, and also **for damage** or loss related to the order if this occurs during transportation by the rider.

In this latest judgment, Madrid TSJ concluded that riders organise their business activity independently and are not subject to compulsory requirements of any kind imposed by the core business (deemed to be the principal defining element of a commercial relationship). The diversity of judicial opinion in this area is therefore evident, and as this law firm already had occasion to highlight, the existence of these contradictory judgments gives rise to notorious and alarming judicial uncertainty. However, we can rest assured that as a result of this Madrid judgment opposing the Asturias TSJ judgment, the matter will certainly end up before the Supreme Court given the unavoidable requirement to guarantee unified doctrine.