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Judges Skeptical of Uber-Lyft Claims in Labor Cases

Federal Judges Indicate Skepticism Ride-Sharing Drivers Are Independent Contractors



Uber and Lyft are contesting court suits that seek to have their drivers classified as employees rather than independent contractors. *PHOTO: REUTERS*

*By Rachel Emma Silverman
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Lyft drivers must keep their vehicles “100% clear” of clutter and offer passengers a fist-bump when they enter the car, according to that company’s “Rules of the Road.” Drivers for rival Uber Technologies Inc. can be “deactivated” for passenger ratings that fall below 4.5 on a five-point scale, according to internal company emails.

But do such rules for conduct and performance make drivers employees of those firms?

That question is at the heart of separate lawsuits in federal court in San Francisco last week, in which two district court judges indicated skepticism that drivers for the two car services should be considered independent contractors. The companies claim the workers are independent contractors, not employees.

Both suits, which seek class-action status, make a case that the drivers should be reimbursed for expenses such as gas and car maintenance that they currently pay out of pocket.

Uber and Lyft, which both declined to comment on the cases, are seeking to have the suits dismissed, and rulings in both are expected later this year. Should either judge allow a case to go before a jury, the resulting verdict could set a legal precedent about how on-demand workers should be classified in the so-called app economy.

Current labor regulations recognize two types of workers: employees in traditional work relationships and independent contractors. Employees are generally covered by protections such as minimum-wage and antidiscrimination statutes, workers' compensation, and union-organizing rights, while the latter have no such protections.

More firms rely on thousands of contract workers to serve as drivers, run errands or do data-entry at the swipe of an app. Firms often prefer independent contractors, because they are not subject to certain tax and legal liabilities and can cost firms less in pay and benefits.

At the Lyft hearing in San Francisco federal court last week, U.S. District Judge Vince Chhabria said that current employment categories are "woefully outdated" when applied to app-enabled firms such as Lyft, according to media reports.

Both district court judges indicated they were likely to let the suits proceed. In the Lyft case, Judge Chhabria indicated that previous California cases found that other workers performing similar work to that of Lyft drivers were considered to be employees, rather than contractors.

Plaintiffs suing Uber argue that they should be treated as employees because the company exerts significant control over their work, sets compensation and vehicle standards, and can terminate drivers at will. As part of the case, Uber was forced to release a series of internal emails on driver termination to the court.

Judge Edward Chen, who heard the Uber suit, voiced skepticism about the firm's claims that it wasn't an employer, but rather a technology company that licenses its app to drivers. According to a local media report, he questioned why Uber set fares and screened and fired drivers.

As the cases stand now, any ruling or verdict would only apply to the companies' drivers in California, but a finding for the plaintiffs could be costly for both companies, forcing them to pay drivers' gas and maintenance expenses, and possibly additional payroll expenses including social security, workers' compensation and unemployment insurance.

Most employment suits settle, said Samuel Estreicher, who teaches employment law at New York University School of Law. However, he doubts these cases will settle quickly because doing so may mean changing their business models, and paying workers more, he said.

Uber is currently valued at some \$41 billion, receiving venture funding from firms including Benchmark, Google Ventures and Menlo Ventures, while its smaller rival Lyft is valued at \$700 million

Last year, an appeals court ruled that FedEx Corp. incorrectly classified as contractors some delivery-truck drivers who were required to wear FedEx uniforms, drive company vehicles and groom themselves according to the company's appearance standards.

The plaintiffs' attorney in the Lyft and Uber cases, Shannon Liss-Riordan, an employment lawyer with Lichten & Liss-Riordan PC in Boston, also represented FedEx plaintiffs in a similar 2013 case in Massachusetts.

About 34% of the labor force, or 53 million Americans, work in some form of contingent arrangement, according to a 2014 report written by the Freelancers Union and Elance-oDesk Inc., an online marketplace for freelance work.

In a recent study, Uber counted about 162,000 "active drivers" in December, but the company doesn't disclose the total number of drivers registered on the platform.