

Before Uber revolutionizes labor, it's going to have to explain these embarrassing emails

"HE'S FUCKING HORRIBLE. PLEASE DO IT ASAP!!!!!"

By: Nitasha Tiku | January 30, 2015

Earlier this week, *New York Times* columnist Farhad Manjoo predicted that Uber's biggest impact on the world would not be in transforming transportation, but in changing the labor market and the way we think about work. He may be right. Uber's explosion is the envy of employers everywhere. And those employers are well aware that Uber became a \$40 billion company by operating as if its drivers are not Uber employees.

Drivers are fighting to be reimbursed for expenses

Uber marketed itself as a technological innovation, not a car company, and classified its drivers as independent contractors — selling them on the arrangement by promising flexible work hours and the freedom to be their own boss. The "Uberization of work," Manjoo argued, means that other companies will also try to "efficiently allocate human beings."

Efficiency, however, is in the eye of the employer. Before this labor revolution can take place, Uber will have to prove its world-changing business model isn't screwing over drivers. Two lawsuits, one against Uber and one against Lyft (a smaller, rival e-hailing company), filed on behalf of drivers are currently winding their way through San Francisco federal court. The suits argue that drivers are employees entitled to be reimbursed for expenses like gas and vehicle maintenance that they are currently paying out of pocket.

Each case is seeking class action status. Arguments at yesterday's summary judgment hearing for Lyft do not bode well for Uber's case, which will be heard at a similar hearing this afternoon. According to Reuters, US District Judge Vincent Chhabria said California legal precedents "point pretty strongly in the direction" that "people who do the kinds of things that Lyft drivers do here are employees."

A ruling against Lyft or Uber could "force the companies to pay social security, workers' compensation, and unemployment insurance," thereby deflating the value of Uber, Lyft, as well as other on-demand apps like the grocery-delivery app Instacart or the housecleaning app Handy.

Shannon Liss-Riordan, the lawyer representing the plaintiffs in both suits, said trying to classify employees as independent contractors is a time-honored practice. "It's nothing new," Liss-Riordan told *The Verge*. "This is just the latest lingo."

For example, she said, "FedEx has tried to argue that it's not in the delivery business. They claimed to be a logistics network. It doesn't pass the straight-face test." Her firm, Lichten & Liss-Riordan PC, represented the FedEx drivers in a lawsuit. The 9th US Circuit Court of Appeals in San Francisco recently ruled that FedEx drivers are employees, but the case is ongoing.

Lyft told *The Verge* it would not comment pending litigation, and Uber did not respond to questions.

At this point, it's hard to believe that any legal or regulatory threat can hold Uber back for long. Even the endless succession of nightmarish headlines fade in the face of cheap fares summoned with a smartphone. About a week ago, Uber closed a \$1.6 billion round of funding, bringing its total financing to \$4.9 billion.

However, this case seems to have put Uber in serious defense mode. The company used paper-thin arguments to try to keep communication between Uber employees and Uber drivers used as evidence under seal. Newly public emails, submitted by the plaintiff, some of which were ^{first published by *Buzzfeed*}, show what Uber has to be defensive about.

Some background: a significant factor in classifying employees vs. independent contractors is whether they can be terminated at will. According to Liss-Riordan, Uber was trying to keep the emails under seal because it showed "the cavaliness that Uber managers used" when deciding to deactivate a driver.

Uber tried to get this email calling a driver "FUCKING HORRIBLE" sealed because of "coarse language which could potentially embarrass that employee," according to an order from Judge Chen. Chen denied the request because "an employee's use of the 'fword' in a business communication is not so shocking in today's world," he wrote. The F-bomber was Brian McMullen, who worked as a community manager for Uber at the time.

This email between McMullen and Scott Munro, then a San Francisco Operations Manager, extols the joys of firing a driver by phone. Uber tried to get it sealed because it allegedly contained "commercially valuable, non-public information regarding Uber's strategies." Judge Chen dismissed the claim as "seriously misleading."

Liss-Riordan claimed she won her argument in the FedEx case in part because FedEx managers do ride-alongs with drivers four times a year. In contrast, she said, Uber and Lyft are "constantly evaluating their drivers in real time" and then "using that information to terminate." She argued that Uber and Lyft managers change the minimum rating from time to time and "use discretion to decide who to terminate and who to give a chance to."

In another unsealed exchange, a driver complains that tech issues with the Uber app have unfairly cut into his wages. Bridgette Tuquero, an operations and logistics manager for Uber in San Diego, first blames Verizon. When the driver doesn't back down, she suggests he quits. The driver, who claims to be doing a Masters in Economics, responds by critiquing Uber's business model. In return, Tuquero sends him a link to a *TechCrunch* article about Uber securing another \$258 million in investment, noting, "Google thinks we're a pretty good business model."

Bridgette Tuquero December 02, 2013 22:50

Clearly, you're not happy partnering with Uber. It's not for everyone. Feel free to bring your iPhone back at your convenience.

Best Regards,
Uber San Diego

December 03, 2013 22:33

That go nothing to do with what I'm saying. You model only care more for the user and your company get their commission regardless to what the driver goes thru. I know you don't have much pull. I probably as much education as most mangers manager. I'm doing my masters in economics and your model economically is a failure. Many company rise and goes down to ashes. So maybe it's good idea to pass it to your managers. Since most drivers I met unhappy but won't say any thing since it temporary then you workers just do what you been told as long as you get paid every 2 weeks

Sent from my iPad

Bridgette Tuquero December 03, 2013 23:32

Hi

Google thinks we're a pretty good business model: <http://techcrunch.com/2013/08/22/google-ventures-puts-258m-into-uber-its-largest-deal-ever/>

Bring in your phone if you're unhappy.

Another sign that Uber is concerned? Last week, David Plouffe, the former Obama campaign manager, who is now the head of policy and strategy at Uber, introduced a study commissioned by Uber showing that 78 percent of drivers said they were "satisfied" driving for Uber and 71 percent said their income had improved. The statistically insignificant study, culled from 601 drivers (only 11 percent of those surveyed), was co-authored by Princeton University economist Alan Krueger, who overlapped with Plouffe as an advisor to President Obama.

Liss-Riordan said there are drivers working 60 or 70 hours a week who don't even make minimum wage after gas and other expenses are factored in. Uber and Lyft "tried to shift the cost of running a car company to their drivers," she added. "Both companies have saved a massive amount of labor cost."