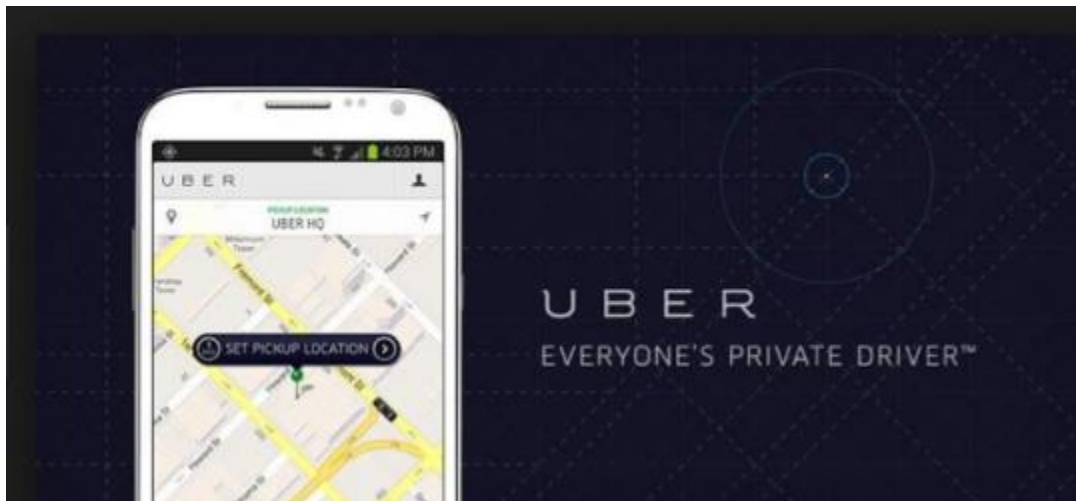


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Lawsuit alleges Uber unfairly withholds tips from drivers

08.20.13 - 12:29 pm | Rebecca Bowe |



A class action lawsuit filed against Uber, a tech-based service that connects riders to drivers and has filled San Francisco streets with sleek black town cars, alleges that the company is cheating its drivers out of tips.

The suit also charges that drivers have been misclassified as independent contractors under California law.

Uber's website tells customers there is "no need to tip," and drivers are prohibited from accepting any extra cash. The complaint alleges that "drivers do not receive the tips that are customary in the car service industry and that they would otherwise receive were it not for Uber's communication to customers that they do not need to tip."

The lawsuit was filed in San Francisco's Northern District on Aug. 16. Attorney Shannon Liss-Riordan, of the Boston-based firm Lichten & Liss-Riordan, believes that by withholding tips "Uber is artificially trying to make the total price look lower – and in doing so, they're hurting the drivers."

Douglas O'Connor, who is named as a plaintiff in the lawsuit, said that when he started working as an Uber driver in San Francisco about 10 months ago, he was told not to accept tips because they were included in the service fees automatically charged to customers' credit cards. But there's nothing in his paycheck to indicate whether he has received a gratuity or for what amount, O'Connor said.

"For some of the drivers there has been a line item, but that line item that's called the gratuity has not gone to the drivers," Liss-Riordan explained. In those cases, it appears Uber takes half, she said. And in cases like

O'Connor's, "There is no separate gratuity that's going to the drivers," Liss-Riordan said, so the representation that any tip was included in the first place is "a lie."

Liss-Riordan noted that Uber has even been known to send out "secret shoppers" who are directed to take Uber, offer cash tips, and report whether the drivers accepted the tips or declined with the explanation that the tips are included in the service fee, as they are instructed to.

Meanwhile, Uber recently required drivers to agree to revised contract terms, which is mandatory in order to continue their relationship with the ridesharing company. Buried in the fine print is an arbitration clause with a class action waiver. By agreeing to these terms – something Uber not only requires but makes exceptionally easy with the tap of a button on a smartphone – drivers are essentially giving up their rights to join a class action suit against the company. O'Connor noted that the contracts were sent out in English only, but English is not the first language of many Uber drivers.

"In order to opt out of this class action they have to send a hand-delivered letter to the general counsel of Uber in San Francisco," Liss-Riordan pointed out. "We're also trying to get the word out to Uber drivers that if they want to participate in this class action case and potentially recover their tips, they actually have to opt out of this arbitration clause."

O'Connor said he drives between 30 and 70 hours a week, and would like to continue doing so in the long run. But without the additional income he feels he could be earning in tips, "I'm not going to be able to do it. It's just so expensive to live in the San Francisco Bay Area." He described what happened when a businessman he'd ferried to the airport offered to add an additional \$10 to \$15 onto his company credit card for exceptional customer service. He couldn't, because Uber does not provide a mechanism for attaching an additional driver bonus onto the service fee.

Asked if there was an estimate as to how much drivers could be losing in tips, Liss-Riordan said, "It adds up to a lot – for someone working there for over a year, you could be talking in the hundreds if not thousands of dollars." And for the entire class of Uber drivers, who are estimated to number in the thousands across major U.S. cities, she noted that the total damages sought could end up being in the millions.

In addition to charging that Uber is "unjustly enriching" itself by collecting fees that are owed to drivers, the suit also claims that Uber drivers should be classified as employees under California law.

"Under California law, there's a multi-factor test to determine whether someone is an employee or an independent contractor and the test looks at things like ... whether the workers' services form the core part of what the business does," Liss-Riordan explained. In this case, they do, she added: "If there were no drivers, there would be no Uber."

As independent contractors, Uber drivers must pay for their own gas expenses and vehicle maintenance. They are not eligible for workers compensation or unemployment benefits in the event that they are terminated. Nor is Uber required to make any contributions toward its San Francisco drivers' health care costs, since its drivers aren't considered employees. The San Francisco Health Care Security Ordinance mandates that employers contribute toward healthcare for any employee working eight hours or more.

Liss-Riordan specializes in representing tipped employees. She prevailed in a lawsuit against American Airlines on behalf of skycaps who were prevented from receiving tips because the airline created a \$2 fee for curbside check-in that led passengers to believe that gratuity was included.

Reached via email, Uber spokesperson Andrew Noyes declined to answer questions about the allegations raised in the complaint, nor would he explain why Uber required its drivers to agree to an arbitration clause waiving their rights to join a class action suit. Noyes declined to comment, saying the complaint had not yet been formally served.

O'Connor, meanwhile, said he agreed to be named as a plaintiff in the case "in order to improve working conditions for myself and my colleagues." Asked if he was concerned whether this decision would affect his standing as an Uber driver, O'Connor shrugged it off. "I'm probably not going to get the employee driver of the month award," he joked.

