

Uber scores a big win in legal fight to keep drivers as independent contractors

O'Connor v. Uber loses its class certification

By [Andrew J. Hawkins](#) | [@andyjayhawk](#) | Sep 25, 2018, 12:53pm EDT

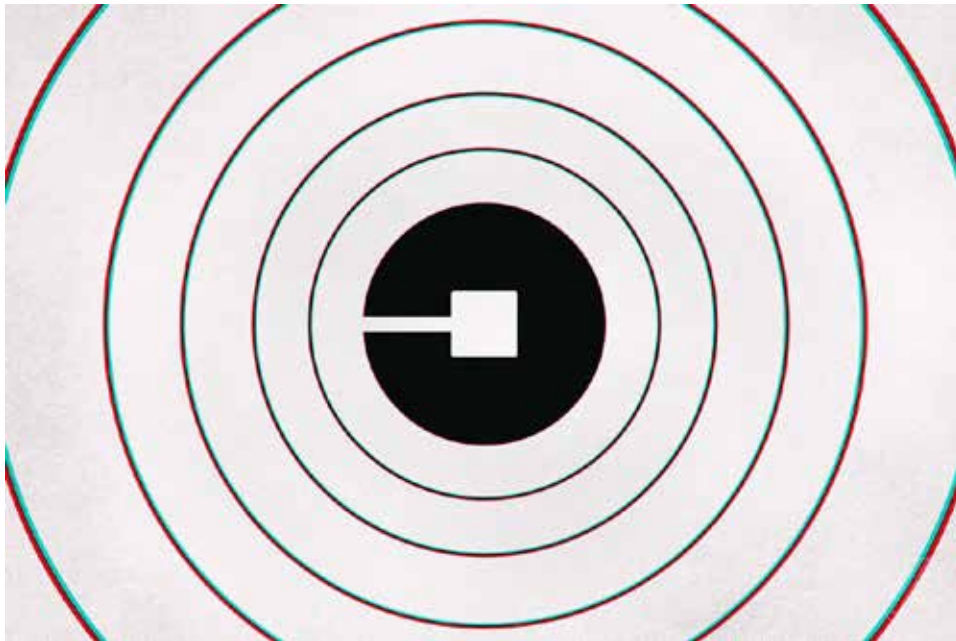


Illustration by Alex Castro / The Verge

A three-judge panel ruled in favor of Uber in a long-standing lawsuit that could have a profound impact on the future of ride-sharing and the gig economy.

The Ninth US Circuit Court of Appeals issued a decision Tuesday reversing the class certification order in the case of *O'Connor v. Uber*, in which Uber drivers argued they should be categorized as employees rather than independent contractors. The judges nullified the decision on the ground that Uber's arbitration clause prohibits class actions.

"We have, unfortunately, been long expecting this," said Shannon Liss-Riordan, an attorney representing Uber drivers in *O'Connor*. She cited the Ninth Circuit's previous ruling against Uber drivers, and the US Supreme Court's decision in *Lewis v. Epic Systems* earlier this year, in building up to this decision. "Those two previous rulings," she said in an email,

**"WE HAVE, UNFORTUNATELY,
BEEN LONG EXPECTING THIS"**

“removed one of our remaining arguments for why Uber should not be able to use its arbitration clause to avoid certification of a class for its widespread labor violations.”

The Ninth Circuit ruling impacts a consolidated appeal of 11 pending cases that essentially boil down to the same issue: should drivers be considered employees? If so, can they sue as part of a class-action lawsuit? With today’s ruling in favor of Uber, drivers will be considered contractors — and they won’t, as is currently the case, receive numerous benefits. “We are pleased with the Court’s decision,” a spokesperson said.

When prospective drivers sign up with Uber, they agree to waive their right to sue in favor of arbitration, a private, quasi-legal process that generally favors corporations over individuals. Drivers can also opt of arbitration if they so choose.

The main case, *O’Connor*, has been winding its way through the courts for over five years. It was almost settled in 2016, when Uber agreed to pay as much as \$100 million to the roughly 385,000 drivers represented in *O’Connor* and one other case, so long as it could continue to classify them as freelancers. But the settlement was later rejected by a federal judge, who argued that the amount was insufficient.

**WINDING ITS WAY THROUGH
THE COURTS FOR OVER FIVE
YEARS**

With the loss of its class certification, drivers involved in the lawsuit are running out of options. Liss-Riordan said she is considering an en banc appeal, in which an appeals court agrees to rehear arguments.

“In the meantime, because the Ninth Circuit reversed the district court’s ruling on Uber’s arbitration clause, we are urging all Uber drivers who want to pursue these misclassification claims to contact us immediately to sign up for individual arbitration,” she said. “Thousands of drivers have already signed up for individual arbitration. If Uber wants to resolve these disputes one by one, we are ready to do that — one by one.”