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Uber Driver Was Employee, Not Contractor, California Commission Says

Ruling says driver was an employee, potentially paving the way for new costs to the company



Uber said Wednesday it is appealing the ruling. *PHOTO: REUTERS*

By Lauren Weber and Douglas MacMillan

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California's labor commissioner has ruled that a driver for Uber Technologies Inc. should be classified as an employee of the company, a decision that marks the latest setback for the ride-hailing company's labor model.

The ruling doesn't set a precedent for how Uber compensates its 200,000 drivers, but it is one of a growing number of court decisions that may have far-reaching implications for the company. Uber says its drivers are independent contractors and not employees, a designation that means it isn't responsible for paying drivers' insurance or job-related expenses and allows the company to operate and expand at relatively low cost.

Uber has been ordered to pay Barbara Berwick, a San Francisco driver for Uber from July to September of last year, more than \$4,100 to cover the costs of vehicle mileage and tolls, the commissioner said in a June 3 ruling that was filed in California state court on Tuesday.

The regulator found that Uber is "involved in every aspect of the operation," from vetting drivers and their vehicles to setting rates for trip fares, and therefore is legally an employer of its drivers. Uber had unsuccessfully argued

that because it is just a smartphone service that matches passengers with rides, its drivers should be classified as contractors.

Uber said Wednesday it is appealing the ruling and pointed to a 2012 labor commission ruling that found one of its drivers shouldn't be classified as an employee. "The number one reason drivers choose to use Uber is because they have complete flexibility and control," the company said in a statement.

The labor commission disputed that drivers control all aspects of their work, noting that, among other things, passengers pay Uber for their rides and Uber, in turn, pays drivers "a nonnegotiable service fee."

Rulings by state agencies like the California Labor Commission don't set a formal precedent for court cases or other actions, said Reuel Schiller, a law professor at University of California Hastings College of the Law.

But, should various federal or state entities determine that Uber drivers are employees—whether for purposes of collecting unemployment insurance or expense reimbursement, for example—"it builds up momentum for the idea that these folks look a lot more like employees than they look like independent contractors," he said.

The company could alter its contract with drivers, perhaps tweaking it to fall just under the employee threshold on tests of drivers' status. But that isn't as easy as it sounds, said Jeff Hirsch, a professor at the University of North Carolina School of Law.

"They can try to walk up to that line but they just don't know where the line is," partly because the list of factors used to determine employment status is long and allows for some ambiguity, he said.

No ruling related to a single company like Uber will be applied to all firms in the sharing economy. Determining whether a worker is an employee is "a very fact-intensive inquiry," Mr. Schiller said, and so judges and agencies must base their decisions on a company's specific arrangements with workers.

Uber is fighting several lawsuits in California challenging its ability to classify drivers as contractors. If the plaintiffs are successful, the cases could help clarify a murky area of employment law and force Uber to pay new costs to cover employee benefits and driving costs.

The decisions could also affect the valuations of companies in the so-called on-demand economy. Uber is currently raising new funding at a \$50 billion valuation, The Wall Street Journal has reported.

Shannon Liss-Riordan, a plaintiffs' attorney representing Uber drivers in a class-action suit in federal court in San Francisco, called Wednesday's ruling significant and potentially helpful for her clients, since it holds the company is required under California law to repay the driver's job-related costs.

"This is the same result we are seeking in our case, reimbursement of expenses," says Ms. Riordan, an employment lawyer with Lichten & Liss-Riordan PC in Boston.

Earlier this month, U.S. District Judge Edward Chen, in the Northern District of California, allowed lawsuits by two drivers for Uber to proceed in court, rebuffing the ride-sharing company's attempt to resolve the actions in closed arbitration proceedings. In March, Judge Chen and another San Francisco judge issued similar rulings in two other cases involving Uber and its rival Lyft Inc., focused on the employee-versus-contractor question.

—Rachel Emma Silverman contributed to this article.