

Year in Preview: What the Uber Lawsuit Means for Workers in the Sharing Economy

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Uber CEO Travis Kalanick.

The sharing economy will go on trial in 2016, with tens of billions of dollars, hundreds of thousands of jobs, and maybe even the future of labor at stake. To quote an old adage, the only certainty is uncertainty.

In one corner is Uber, the \$62 billion, San Francisco-based ride-hail app with a knack for provoking controversy — after all, this is the same company that spiked rates in New York during Hurricane Sandy and once considered hiring PIs to "dig up dirt" on troublesome journalists.

In the other corner are California drivers and a small Boston legal firm alleging that Uber exploits drivers by classifying them as independent contractors while treating them like employees. Drivers complain that Uber forces them to pay their own gas, insurance, and maintenance costs, but terminates them at will and slashes rates without

warning, all while taking a bite of their commissions (20-30 percent, depending on the service).

Uber counters that it's a job creator that offers drivers with no special degree or training an opportunity to be their own bosses and earn as much as \$90K a year in some markets. Unlike a typical nine to five, Uber's flexibility and supposedly lucrative payouts are attractive to college students and working parents. Uber insists that all of this is possible because it's a software company, not a taxi service.

"But companies always try to claim they're something else," plaintiffs' attorney Shannon Liss-Riordan tells *SF Weekly*.

Liss-Riordan, a seasoned labor watchdog with the Boston firm Lichten & Liss-Riordan, has won similar cases against FedEx and a Massachusetts strip club called King Arthur's Lounge, getting delivery drivers and strippers (respectively) recognized as employees rather than contractors. But crystal ball-gazing about the outcome of such suits is hazy because the question of who is an employee is a sticky one in courts — and in many states' own labor laws.

"There is no set definition of the term 'independent contractor,'" according to the California Department of Industrial Relations website. Rather, the state refers to an 11-point test. Is the worker paid per hour or per job? Who supplies the necessary workspace and tools? And, most importantly, how directly does the company control what workers do?

No single factor decides everything, and there's rarely a perfect example that hits all 11 marks. At some point, it boils down to a jury's judgment call.

"There are muddy waters to march through," says John Fallone, a startup attorney and executive director of Silicon Valley's libertarian-minded Lincoln Initiative. "Uber doesn't dictate hours or schedules, which seems a point in their favor. On the other hand, a lot of Silicon Valley companies don't put employees on a schedule. It can be very hard to pinpoint. You have to give it to the jury."

Which is just what Judge Edward Chen has ordered. Liss-Riordan hoped that Chen would decide the case himself, but the judge, who disagreed with Liss-Riordan that the suit is about legal hairsplitting rather than facts, decided a bench trial wasn't appropriate.

Nonetheless, Liss-Riordan thinks a jury will find her workaday driver plaintiffs more sympathetic than Uber, whose bellicose CEO Travis Kalanick, frequent PR gaffes, and unregulated operations have spurred protests in Seattle, London, and other cities worldwide.

Uber declined to comment for this story, except to say via a spokesperson that "90 percent of drivers love being their own boss" and that employee classification would spoil the freedom those drivers prize. "They would have set shifts and be unable to use other ride-sharing apps," Uber's spokesperson added.

That's something of a half-truth. No law says that an employee must have set hours or can't work a second job (even at a competing company). But Uber would likely impose those rules if their currently low-overhead workforce becomes a huge payroll expense.

No matter what the court decides, drivers' jobs will almost certainly change. The plaintiff class includes about 150,000 of Uber's estimated 160,000 California drivers. (Drivers who registered as part of a company rather than as individuals are barred from the suit for arcane legal reasons.)

A ruling in Uber's favor would reinforce the idea that the company's drivers, as well as workers at other sharing economy behemoths, aren't entitled to the same protections as traditional workers. An Uber loss could redefine drivers' livelihoods by relieving them of overhead costs while also turning their freewheeling gig into something more like a regular job.

Some drivers, such as 66-year-old Whit Fletcher of Redwood City, Calif., prefer the devil they know.

"I think of it like joining a pirate crew," Fletcher says. "You join up, and if the captain decides to cut your throat and throw you over, you knew the risks."

Fletcher says he's doing just fine for himself and has little sympathy for those who "thought the streets would be paved with gold."

By contrast, Jeremy Ferrick, a Sonoma, Calif., musician who's been Ubering in San Francisco for about a year — many drivers commute to San Francisco to take advantage of the city's high demand, higher rates, and relatively small street grid — thinks Uber would benefit by playing nice.

"Uber has to think about what kind of legacy it wants to leave," he says. "Do they want to be remembered as a company that treats people well?"

The long view is certainly worth considering. If the plaintiffs win, they'd likely trigger a domino effect of lawsuits in other jurisdictions and against similar companies. The entire sharing economy would have to adapt to old-fashioned labor rights. At the very least, this would blow a hole in the image of startups as outré pioneers creating new laissez-faire economies. For smaller companies with shaky financials, the cost might be too much to bear.

If Uber wins, however, it could signal to even non-tech companies that the 1099 contractor is the future, and the sharing economy model could expand and "Uberify" America's workforce. What were once jobs could become gigs instead, with greater flexibility but little in the way of security or benefits.

Even a less momentous ruling could pave the way for future litigation.

"It all depends on the wording of the decision," says technology lawyer Andre Gharakanian. (Gharakanian was Uber's very first lawyer but says he no longer represents the company.) "This could turn out to be a wild card, a big decision that sets a major precedent, or it could just be the case that opens the door."

In that event, Uber would be mired in lawsuits and appeals for years, or be hampered with regulations as lawmakers try to end-run around an unpopular verdict with new laws, similar to efforts now brewing in Seattle and California to unionize contract drivers.

Oddly enough, a loss might be liberating for Uber. Gharakanian points out that Shyp, a sharing economy parcel delivery company based in San Francisco and valued at more than \$250 million, classified their hundreds of couriers as employees earlier this year, not out of benevolence but because it wanted to control operations openly and directly.

Ultimately, all this legal wrangling might not keep pace with technology. Uber may not need *drivers* at all. In September, Kalanick told a conference in San Francisco that self-driving cars were in Uber's future. In fact, the company has already partnered with engineers at Carnegie Mellon University to open a self-driving car lab in Pittsburgh.

"We don't want to be like the taxi industry who came before us — we embrace the future," Kalanick reportedly told conference attendees. Whether the future will return that embrace remains to be seen.