

# THE WALL STREET JOURNAL.

## Uber, Lyft Cases Focus on Drivers' Legal Status

Ride-sharing firms' business models could be affected by verdicts



Two San Francisco judges separately ruled last week that suits filed by drivers of Lyft and Uber should go before juries. At issue in both cases is whether the drivers, who are employed as independent contractors, should be considered employees of those firms. *PHOTO:ASSOCIATED PRESS*

By **RACHEL EMMA SILVERMAN** | MARCH 15, 2015

A pair of court rulings involving Lyft Inc. and Uber Technologies Inc. may have far-reaching consequences for the ride-sharing firms, and may help to bring clarity to a murky but increasingly important area of employment law.

Two San Francisco judges separately ruled last week that suits filed by drivers of the ride-sharing services should go before juries. At issue in both cases is whether drivers, who are employed as independent contractors, should be considered employees of those firms, and thus entitled to the protections afforded most full-time workers.

A verdict that required Lyft or Uber to reclassify their drivers as employees would throw a wrench in business models that have commanded large investments and valuations. Last week,

Japanese e-commerce giant Rakuten led a \$530 million round of funding for Lyft, helping to boost its valuation to more than \$2.5 billion. Uber, which is much larger, has raised more than \$5 billion in funding and is valued at more than \$41 billion.

Should the cases proceed to trial, the resulting verdicts could also set a legal precedent about how many workers should be classified in the so-called on-demand economy. That could come as welcome news for employment lawyers and others charged with figuring out whether the workers who fulfill Instacart orders, drive UberX passengers, clean homes for Handy clients and perform other tasks assigned by apps should be considered independent contractors or actual employees.

Plaintiffs in both cases argue that drivers should be considered employees, not independents, and should thereby be protected by the same wage and labor rules as employees. The drivers also argue that they should be reimbursed for expenses such as gas and car maintenance that they currently pay out of pocket.

The plaintiffs suing Uber say they should be treated as employees because the company allegedly exerts significant control over their work, sets compensation and vehicle standards, and can terminate drivers at will. As part of the case, Uber was forced to release a series of internal emails on driver termination to the court, showing that drivers could be “deactivated” for passenger ratings that fall below 4.5 on a five-point scale.

In the Uber case, heard in San Francisco, U.S. District Judge Edward Chen denied the company’s motion for summary judgment, concluding that the plaintiffs “perform services for the benefit of Uber,” and that the question of their employment status “presents a mixed question of law and fact that must typically be resolved by a jury.”

Similarly, in the courtroom next door to Judge Chen’s, U.S. District Judge Vince Chhabria, presiding over the Lyft case, ruled that because California’s “outmoded” test for classifying workers “provides nothing remotely close to a clear answer, it will often be for juries to decide.”

Either or both cases could settle, although there are no settlement talks going on, the plaintiffs' lawyer on both cases said. And an arbitration clause that both Uber and Lyft workers are required to sign could limit the scope of the cases.

Spokeswomen for both Lyft and Uber declined to comment on pending litigation.

Uber is likely to argue that an arbitration clause that its workers must sign limits them from participating in the case as class members, said Shannon Liss-Riordan, the plaintiffs' attorney in both cases and an employment lawyer with Lichten & Liss-Riordan PC in Boston. Lyft employees also sign an arbitration clause, but the company's lawyers have indicated that they aren't planning to use the clause, Ms. Liss-Riordan said.



Fake mustaches mark the cars of the riding-sharing company Lyft, which like Uber faces driver litigation. *PHOTO: DPA/ZUMA PRESS*

“When Uber stuck this arbitration clause in an attachment that workers swipe on their smartphone, no one read it,” Ms. Liss-Riordan said. “No one reads these things.”

Ms. Liss-Riordan said her firm is prepared to have plaintiffs appear individually in arbitration, if need be.

So far, she said, “there have been no settlement discussions going on” in either case.

A finding for the plaintiffs could be costly for Uber or Lyft, forcing them to pay drivers' gas and maintenance expenses, and possibly additional payroll expenses including Social Security, workers' compensation and unemployment insurance. As the cases stand now, any ruling or verdict would only apply to the companies' drivers in California, however.

Bill Gurley, a general partner at venture-capital firm Benchmark and an Uber board member, said Sunday at the South by Southwest festival that Uber has about 300,000 drivers around the world and is adding 50,000 per month.

Current labor regulations recognize two types of workers: employees in traditional work relationships and independent contractors. Employees are generally covered by protections such as minimum-wage and antidiscrimination statutes, workers' compensation and union-organizing rights, while the latter have no such protections.

A growing number of firms, including Uber and Lyft, rely on thousands of contract workers to serve as drivers, run errands or do data-entry at the swipe of an app. Firms often prefer independent contractors, because they aren't subject to certain tax and legal liabilities and can cost firms less in pay and benefits.

Uber claims an average driver makes \$19.04 an hour, after paying Uber a commission, higher than the \$12.90 average hourly wage (including tips, Uber says) that the U.S. Bureau of Labor Statistics estimates for taxis and chauffeurs. But the [authors of a recent study](#)—paid for by Uber—acknowledge these figures don't include expenses that come out of drivers' own pockets, including gas, maintenance and insurance. And a number of people with experience driving for the company say Uber has made it more difficult to make a good wage because it frequently cuts prices as a way to entice new passengers.

Last year, an appeals court ruled that FedEx Corp. incorrectly classified as contractors some delivery-truck drivers who were required to wear FedEx uniforms, drive company vehicles and groom themselves according to the company's appearance standards.

Most traditional taxicab companies use independent contractors as drivers, but there have been suits in jurisdictions across the country in which cabdrivers have sued to be considered employees. While several suits are still in progress, rulings in older cases have varied, underlining how murky it is to define what constitutes an employment or contractor relationship under current laws.

—Doug MacMillan contributed to this article.