



Uber drivers' suit over tips clears hurdle

Bob Egelko | on December 7, 2013

A federal judge says Uber, the thriving San Francisco-based shared ride company, can be sued by its drivers for allegedly deceiving customers by telling them tips are included in their fares.

In fact, the drivers allege in their lawsuit, they get only half of the 20 percent "gratuities" charge that Uber adds to some fares, and nothing extra from fares in which the company doesn't specify the amount it's adding to the fee for the ride. They say Uber's practice discourages passengers from tipping.

On Thursday, U.S. District Judge Edward Chen of San Francisco rejected Uber's requests to dismiss the drivers' claims for compensation for their lost tips and for reclassification as employees, which would allow them to recoup expenses for gas and other costs. He said two drivers, who want to expand their case into a nationwide class action, have described practices by the company which, if proven, would violate state law.

"This is a big victory for Uber drivers," their lawyer, Shannon Liss-Riordan, said Friday. "The judge essentially endorsed our legal theory and said we could go forward."

Uber declined to comment.

The core of the suit involves statements on Uber's mobile phone app, seen by passengers who hail the cars, that their fare includes tips - sometimes specified as 20 percent - so they don't need to pay an extra tip to the driver.

In seeking to dismiss the suit, Uber cited California law that defines "gratuities" as amounts paid by customers "over and above the actual amount due to the business for services rendered." The fare each customer pays includes no gratuity, the company argued, because it consists of a single mandatory charge and nothing "over and above" that amount.

Chen disagreed. He said Uber's interpretation of the law would allow restaurants, for example, to avoid tips by adding them to the bill, and would allow some employers to illegally use tip money to satisfy minimum-wage obligations. If Uber tells passengers that 20 percent of their fare is a tip, Chen said, it's pledging to pay that percentage to the drivers.

The judge also allowed the drivers to sue on their claim that they are employees entitled to be paid for expenses, though he questioned whether they would be able to prove that allegation.

Employment status

The drivers' contracts define them as independent contractors, not employees, and they provide their own cars or lease them from another company. The suit alleges that Uber controls the details of their work - the routes and timing of their drives, the cleanliness of their cars, how they must act and speak toward passengers - the hallmark of an employment relationship.

Uber countered that the drivers are paid by the ride, not the hour, and decide when and where to work and even whether to pick up a passenger who hails them. If all those allegations are true, Chen said, the drivers' claim of an employment relationship "would appear to be problematic."

Liss-Riordan said the potential class action would cover more than 1,000 drivers in every state except Massachusetts, where a separate suit has been filed. But Uber has asked Chen to deny class-action status because the drivers' current contract includes an agreement to arbitrate all workplace disputes individually.

The drivers will ask the judge at an upcoming hearing to throw out the arbitration clause or give them another chance to opt out of it and join the lawsuit, Liss-Riordan said. If the judge refuses, she said, the suit will proceed with drivers who have already opted out, and the rest will take their claims to an arbitrator.

Uber, privately held, has increased its services sevenfold over the past year and now has operations in 22 countries. Based on recent financing, it is said to be valued at \$3.5 billion.