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PERSPECTIVE

Uber nightmare for Uber Technologies

By Jonathan Michaels

It's hard to imagine that things could have gotten worse. Earlier this year, ride-share giant Uber Technologies was hit with a bevy of class actions over claims that the company was fraudulently advertising its cars as the "safest rides on the road." Citing to a string of rapes and assaults by Uber drivers, the lawsuits allege that the company's drivers have virtually no training, are not fingerprinted and checked against the Department of Justice criminal database, and are put through a minimal screening process.

Now, Uber has been dealt an even more significant blow — and one that goes to the core of its business model. Last month, the California labor commissioner issued a ruling that an Uber driver should have been classified as an Uber "employee," not an independent contractor.

The case was never intended to be significant. In September 2014, Barbara Berwick filed a claim with the labor commissioner's office, seeking reimbursement of expenses for the two months she had worked as a San Francisco Uber driver. Berwick didn't have an attorney, and no one was expecting much from the claim.

All of that changed, however, when hearing officer Stephanie Barrett issued a 12-page opinion, citing substantive case law and Labor Code statutes, and concluded that under California law Uber drivers should be classified as employees, not independent contractors. The labor commissioner then found that Uber owed Berwick \$4,152.20 in expenses, mileage reimbursements, toll charges, and interest for her two months of employment.

A blanket classification of "employee" for its drivers would be the death knell for Uber. Not only would the company be required to pay substantial payroll taxes, which it would not have to pay for independent contractors, but the expense reimbursement could be unfathomable. Consider that Berwick was awarded slightly over \$4,000 in unpaid expenses for just two months of work. Now consider that Uber has 22,000 in San Francisco alone, and another 140,000



Associated Press

A taxi driver holds a sign reading "Stop Uber, Stop listening" in protest of the ride-sharing company (and a U.S. spy report), in France, June 25.

throughout the rest of the U.S.

As a relevant comparison, and a hint at what could be in store for Uber, last month Fed Ex paid \$228 million to settle a lawsuit regarding the misclassification of 2,300 Fed Ex Ground drivers. With 160,000 U.S. drivers at issue, the financial impact could be catastrophic — even for a company with billions in cash.

But the direct financial impact is just the beginning. Classification as employees would also give drivers substantive legal rights that they so far have not been able to enjoy, such as workman's compensation insurance, unemployment insurance, overtime benefits, and health care benefits. It would also expose the company to an array of claims for wrongful termination, unlawful discrimination, failure to make reasonable accommodations, and unsafe work environment.

And there's still more. Classification as employees also makes the company legally responsible for the actions of its drivers that are performed within the scope of their employment. Up until now, Uber had taken a hardline position that its drivers are independent contractors, shielding the company from their drivers' malfeasance. This position, however, would be eviscerated with an employee classification, opening the company up to an onslaught of lawsuits for acts undertaken by its drivers. This would not only apply to heinous acts like rape and assault, but also to virtually every car accident its drivers negligently caused.

For consumers, an employee classification would likely be seen as a tremendous victory, as it would likely force the company to take more care in hiring and training its drivers, and it would give consumers a party who could shoulder financial responsibility for the acts of the drivers.

Uber is appealing the decision to the San Francisco County Superior Court, but that may just make things worse. Currently, the labor commissioner's decision is limited to Barbara Berwick and her entitlement to \$4,000. At the labor commissioner level, the opinion does not have precedential effect. But, if the decision is affirmed through the California court system, it would become binding on the company and all of its driver-employees, at least in California. The question would then become whether other states would look to the California ruling, and reach similar findings.

There is reason to believe they might. In May, the Florida Department of Economic Opportunity (an agency similar to the California labor commissioner) ruled that Uber driver Darrin McGillis was also misclassified as an independent contractor. As with the labor commissioner's ruling, the Florida decision only relates to McGillis. But Uber is also appealing that decision, which if unsuccessful would also make the ruling applicable to all Florida Uber drivers.

All of this comes at a time when Uber is under attack in other parts of the world. Last month, thousands of French taxi cab drivers took to the streets in protest against UberPOP, the European equivalent of UberX. The French cab drivers are required to pay government taxes for the services they offer; because UberPop drivers are not licensed, they do not pay the taxes.

France has banned the UberPOP ride-sharing app, but Uber has generally ignored the ban. In June, cab drivers organized a protest, blocking roads to Charles-De-Gaulle and Orly airports, and causing a near standstill for air travelers. The protests turned violent, as cab drivers began attacking Uber drivers and burning their cars.

In the days after the riots, French police sweep Uber France's headquarters, arresting two Uber managers. The managers have been indicted on charges of engaging in deceptive commercial practices and instigating an illegal taxi-driving service. Other countries that have banned Uber include Germany, Thailand, Netherlands, Belgium, India and Taiwan.

There is much to be determined in the new sharing economy, and those who are forging the market will be fighting battles for time to come. For Uber this labor issue is moment-defining. If Uber comes down on the wrong side of it, the billions it has amassed may quickly evaporate, replaced with an army of unwanted employees who will truly be wagging the dog.



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