

Judge OKs Overtime Claims Against Uber, Tees Up Central Employment Issue

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A federal judge has rejected Uber's bid to halt a class action lawsuit over the company's overtime pay practices, and ordered the parties to address whether Uber drivers are employees or independent contractors under the Fair Labor Standards Act.

U.S. District Judge Michael Baylson of the Eastern District of Pennsylvania denied Uber's motion for partial summary judgment in *Razak v. Uber Technologies* on Wednesday, saying, at least at the summary judgment phase, he could not agree with Uber's argument that time the drivers spend "online," or available to accept rides, but not transporting riders, should not count as compensable time.

He further called for the parties to complete taking any appropriate discovery on the issue of whether drivers are employees or independent contracts.

Sacks Weston Diamond attorney Jeremy Abay, who is representing the plaintiffs, said the ruling makes the federal district court the first in line to address that question in regard to Uber.

"We are pleased that the court denied Uber's fourth substantive motion, and we look forward to briefing on the core issue in this case, whether Uber Black drivers are under the law independent contractors, or employees," Abay said.

The proposed class action is on behalf of Uber Black drivers, who provide limo services.

On the compensation issue, Baylson noted the allegation that drivers needed to be "tethered" to their phones, and said he could not dismiss the issue at the summary judgment phase.

"That drivers have only 15 seconds to respond to a given trip request may reasonably be considered a requirement that drivers are required by Uber to be tethered to their phones while online," Baylson said. "Similarly, that drivers are automatically switched from online to offline after ignoring three trip requests could reasonably be considered a severe restriction on their ability to engage in personal activities." The ruling may be a first for district courts within the U.S. Court of Appeals for the Third Circuit, Baylson said, although he added that other districts across the country have addressed similar disputes over compensable time for claims arising out of new technologies.

In *Razak*, the plaintiffs alleged Uber violated the FLSA overtime requirements and the minimum wage. The suit was filed in early 2016, and the overtime claims were initially dismissed. The plaintiffs, however, were given leave to include new pleadings, and the defendants subsequently filed another summary judgment motion.

The dispute, according to Baylson, hinges on how controlled the drivers are while they are waiting for passengers.

According to Baylson, both sides contend the case presented novel issues, with Uber arguing the time cannot be compensable, because the drivers can go offline any time they choose, and the drivers contending Uber's argument was an application of Gilded Age logic to the "gig economy," where "repugnant workplace conditions [were] permissible because of the laborer's 'freedom of contract.'"

Baylson said "legislation or regulatory agency action is better suited to govern the impact of new technology on daily life activities," but that he would like the record to be fully developed on the issue.

"The court finds, if this issue continues to trial, it should be articulated on a factual record, with cross-examination and subject to the Rules of Evidence, so that any final legal decisions can better rest on a trial record, rather on the dueling papers that are inherently part of Rule 56 litigation," Baylson said. Matthew Hank of Littler Mendelson, who represents Uber, did not return a call for comment.

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