

Uber Can't Get Partial Win In Drivers' 'On Call' Fight

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Law360, San Francisco (September 13, 2017, 7:38 PM EDT) -- A Pennsylvania federal judge refused Wednesday to toss part of a putative class action accusing [Uber Technologies Inc.](#) of violating the Fair Labor Standards Act, reiterating his position in an earlier order that said the issue of whether drivers are working when “on call” can only be resolved after discovery.

U.S. District Judge Michael M. Baylson said he was reluctant to make any definitive legal rulings regarding compensability for time drivers spend online using Uber’s app. The judge said this is “particularly true” since the issue may be inextricably intertwined with whether the drivers are employees or independent contractors, he said.

“A judge must tread carefully before establishing any broad rules relating to a highly successful and popular new technology like Uber, which has drastically changed the transportation landscape, particularly in large cities such as Philadelphia, where Uber — and its competitors, such as [Lyft](#) — have threatened the value and existence of taxicabs,” the judge said.

The ruling keeps intact a putative class action launched by lead plaintiffs Ali Razak, Kenan Sabani and Khaldoun Cherdoud, who are seeking to represent a class of drivers who drive for Uber’s luxury car service UberBlack. The suit claims Uber misclassified the drivers as independent contractors. As a result, the drivers were denied minimum and overtime wages, the suit says.

The suit also raised questions about whether the drivers were at work when they logged into the company’s application on their phones.

Uber sought to toss the suit in its entirety in October, but Judge Baylson rejected the bid in [December](#), finding the issue of whether the company’s drivers are working when “on call” can only be resolved after discovery. In his order, he also expedited discovery solely on the question of on-call time.

Since then, the parties have entered discovery and Uber asked the court again to toss only the claims related to time spent on the app, which has been fiercely **opposed by the drivers**.

In his order Wednesday, Judge Baylson said the drivers are advocating for a novel application of the FLSA's requirements for time spent on call. But until now, courts have only applied those requirements to traditional, scheduled shift work, and he said application-based ride-sharing is a disruptive business model "in search of a legal theory."

Therefore, the judge said the legislature or regulatory agencies are better suited to govern these kinds of issues.

"The court cannot conclude that plaintiffs' time online is not compensable as a matter of law," Judge Baylson said. "Rather, 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 than on the dueling papers that are inherently part of ... litigation."

In his 31-page order, Judge Baylson also outlined the list of undisputed facts, and noted that Uber doesn't restrict a drivers' ability to engage in personal activities while he or she is online.

The judge said the drivers have even conceded that they've engaged in a range of personal activities, like accepting rides from private clients, sleeping, running errands, smoking cigarettes and accepting personal phone calls. They also sometimes forget to go offline and remain in the "online" mode on the Uber App despite having no intention of completing trips, he said.

Still, it's not enough to rule on the matter, since it's unclear if those drivers are employees, the judge said.

The judge denied Uber's partial motion for summary judgment without prejudice, and with leave to refile at the completion of discovery.

Counsel for both parties didn't immediately respond Wednesday to requests for comment.

The drivers are represented by John K. Weston and Jeremy E. Abay of [Sacks Weston Diamond LLC](#).

Uber is represented by Robert W. Pritchard, Joshua C. Vaughn, Andrew M. Spurchise, Niloy Ray, Sophia Behnia, Paul C. Lantis and Wendy Buckingham of [Littler Mendelson PC](#).

The case is Ali Razak et al. v. Uber Technologies Inc. et al., case number [2:16-cv-00573](#), in U.S. District Court for the Eastern District of Pennsylvania.

--Additional reporting by Dan Packel and Linda Chiem. Editing by Philip Shea.

https://www.law360.com/articles/963673/uber-can-t-get-partial-win-in-drivers-on-call-fight?ts_pk=3d58b6da-93e2-461e-a50e-cb7862215bd8&utm_source=user-alerts&utm_medium=email&utm_campaign=tracked-search-alert