

## UberBlack Drivers In 'On Call' Spat Say They're Employees

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Law360 (February 27, 2018, 9:55 PM EST) -- Philadelphia-based Uber limo drivers told a federal judge Monday that Uber must face putative class claims that it failed to compensate drivers for time they spent online on the ride-hailing app in violation of the Fair Labor Standards Act, saying Uber exercises enough control over drivers to classify them as employees.

The drivers — who drive for Uber's higher-end service UberBLACK, which offers rides in luxury sedans or SUVs — fired back at [Uber Technologies Inc.](#)'s latest bid for summary judgment in a suit over unpaid "on call" time, which at its core challenges Uber's alleged misclassification of drivers as independent contractors instead of employees.

"Uber begins its argument by stressing that — adhering to the non-negotiable contracts drafted by Uber — UberBlack drivers are independent contractors who own separate businesses," the drivers said in their opposition brief Monday. "This is farce at the outset, for many reasons."

The drivers slammed Uber's argument that the drivers are wholly independent just because they incorporated and operated their own black car limousine companies in Philadelphia.

"Uber's 'corporate affiliation' argument is 'faintly ridiculous,' and appears to be nothing more than a premeditated misclassification defense," the drivers said. "Indeed, Uber does not require UberX drivers to incorporate, and those drivers are forced to accept 'similar' contracts. Nor do the limousine regulations require drivers to incorporate."

Those regulations instead require limousine drivers to either own a certificate of public convenience, be employed by the certificate holder or lease the limousine directly from the certificate holder, according to the drivers' brief.

"Here, all three plaintiffs are permitted to provide limousine services in Philadelphia by virtue of Uber's certificate of public convenience, which is why their vehicles are registered under Uber's limousine fleet and are insured by Uber," they argued. "In sum, the mere fact that UberBlack drivers are affiliated with business organizations has no bearing on the economic realities of their relationships with Uber."

The UberBlack drivers insist there's substantial evidence that Uber enforces a host of rules on

drivers it claims are independent. At least one of the named plaintiffs, Khaldoun Cherdoud, was banned from airport pickups for one week for purportedly violating Uber's so-called "empty sleeper" policy in Philadelphia.

UberBlack drivers are required to wait in a queue at Philadelphia's airport; it's a designated zone at the airport, but it costs money to wait there, the drivers' attorney Jeremy E. Abay of [Sacks Weston Diamond LLC](#) told Law360 on Tuesday.

Under Uber's policy, UberBlack drivers aren't allowed to leave their phones in the designated airport zone in which they're required to wait for pickups if they're not physically present with their phone.

For another plaintiff, Kenan Sabani, Uber deactivated his driver account just because he had a driving rating of 4.65 out of 5 stars, which is just shy of the 4.7 rating that Uber requires UberBlack drivers to have. And plaintiff Ali Razak's account was deactivated for purportedly violating Uber's background check policy.

All three were disciplined by Uber, dispelling the company's argument that despite having all these written rules for driver, they don't actually enforce them in practice, Abay explained.

"This current motion is an attempt by Uber to have the court summarily decide [the drivers] are independent contractors," Abay told Law360. "We believe that the relationship between Uber and UberBlack drivers is even more indicative of an employer-employee relationship."

Uber moved for summary judgment last month, insisting that the drivers are independent business owners, not employees.

"In starting their own companies, plaintiffs staked a claim to total and exclusive control over how they would run their businesses," Uber said in a Jan. 26 motion.

The plaintiffs — not the Uber defendants — independently determined how to generate customers and demand for their services, the degree to which they would invest in their business, how to generate revenue and profit for their businesses, and whether to engage other drivers to work for their companies, Uber said.

Plaintiffs invested substantially in their businesses by purchasing and leasing luxury vehicles,

paying for all expenses incurred — including vehicle insurance, repairs, maintenance, towing, tolls, gasoline, cellphones — and marketing and advertising their businesses, Uber added.

Uber has tried unsuccessfully to duck the suit before. U.S. District Judge Michael Baylson last September [denied](#) Uber's partial motion for summary judgment on the question of whether time spent online on the Uber app is [compensable work time](#) under the FLSA. The judge reiterated his position in an earlier order that said the issue of whether drivers are working when “on call” can only be resolved after discovery. In December 2016, Judge Baylson [rejected](#) Uber's bid to have the suit dismissed outright.

Representatives for Uber did not immediately respond to a request for additional comment Tuesday.

The drivers are represented by John K. Weston and Jeremy E. Abay of Sacks Weston Diamond LLC.

Uber is represented by Andrew M. Spurchise, Niloy Ray, Sophia Behnia, Paul C. Lantis, Wendy Buckingham, Robert W. Pritchard and Joshua C. Vaughn 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 Dorothy Atkins and Dan Packel. Editing by Kelly Duncan.

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