

Daily Labor Report®

UberBlack Drivers' Classification Case Revived by 3rd Cir. (4)

By Kathleen Dailey and Erin Mulvaney

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- First appeals court decision on UberBLACK driver classification
- Uber's control over drivers work, profits raise genuine disputes

UberBLACK drivers in Pennsylvania convinced the Third Circuit to revive their lawsuit alleging that they're Uber Technologies Inc. employees entitled to minimum wages and overtime based on the control the gig company exerts over them.

The drivers put forth enough evidence to go to trial on their claims that they were misclassified as contractors under the Fair Labor Standards Act and Pennsylvania law, the U.S. Court of Appeals for the Third Circuit said.

While UberBLACK drivers set their own schedules and have some ability to select passengers, a judge or jury must determine if Uber still maintains the right to control several aspects of their work and their opportunities for profit, the appeals court said, reversing the Eastern District of Pennsylvania's summary judgment ruling in Uber's favor. A company's control over a worker is a major factor in determining whether an employee or contractor relationship exists.

The decision only applies to UberBLACK drivers in Pennsylvania and only has precedential value in the circuit, which includes New Jersey and Delaware. But legal observers say the case could have broad impact, as it may test the fundamental framework of the rideshare company's workforce model.

Nationally, this is the first court of appeals case involving Uber—or any gig economy company—to address misclassification under the FLSA standard, said Travis Lenkner of Keller Lenkner LLC, a firm that represented the UberBLACK drivers on appeal in the proposed class action. In previous disputes that rose to the appeals court, drivers ultimately were compelled to arbitration.

"This is a win not only for our clients, but for Uber drivers and gig-economy workers throughout the country," Lenkner said in an email to Bloomberg Law. "If Uber couldn't defend summary judgment for these UberBLACK drivers, it is difficult to imagine how Uber and other gig companies can avoid trial on any of their workers' misclassification claims. This decision strikes at the heart of these companies' predatory business model. We look forward to the proceedings in the district court."

An Uber spokesperson said in a statement, "The Third Circuit did not rule that drivers using UberBLACK in Philadelphia should be classified as employees; it merely found that there were fact issues that could not be decided in a summary judgment motion. We disagree with the Third Circuit's opinion and we are considering all options."

Evidence From Drivers

Uber, which went public last year, listed the Third Circuit case in its IPO materials. It said if the court sides with the drivers, and the company is required to classify drivers as employees, it "would incur significant additional expenses for compensating drivers, potentially including expenses associated with the application of wage and hour laws (including minimum wage, overtime, and meal and rest period requirements), employee benefits, social security contributions, taxes, and penalties. Further, any such reclassification would require us to fundamentally change our business model, and consequently have an adverse effect on our business and financial condition."

Uber has been hit with worker classification lawsuits for years, forcing it to defend its business model that leans on independent contractors. The model, adopted by other gig companies such as Lyft Inc., DoorDash Inc., and Grubhub Inc., allows workers freedoms outside a traditional work arrangement. But as contractors, they aren't entitled to benefits guaranteed to employees, such as overtime, minimum wage, and workers' compensation.

Uber's expenses per driver could spike by more than 20% if they have to reclassify them as employees, according to a Bloomberg Intelligence analysis.

"This ruling is a huge blow to Uber's claim that drivers are independent contractors," said Veena Dubal, associate professor of law at the University of California, Hastings College of the Law. "While this isn't a final ruling on the issue, the appellate court, in no uncertain terms, made clear that the control that Uber exerts over fares, trip requests, whether to refund or cancel a fare, and the fact that all of this can change without notice weighs in favor of employment status."

The Third Circuit noted that UberBLACK drivers own and operate their own independent transportation companies, and can drive as much or as little as they want to, transport private clients, drive for competitors, and strategically use the Uber mobile application to obtain more lucrative trips. Those factors could weigh in favor of contractor status.

But Uber still retains significant control over what the drivers are paid and where they drive to, which could show employee status, the court said.

Uber determines the fare, the driver's territory, which driver gets a trip request, whether to refund or cancel passenger fares, and company advertising, the court said. The company also can deactivate UberBLACK drivers if their passenger-satisfaction rating falls below 4.7 stars and prevent them from accepting rides through other platforms.

Judge Joseph A. Greenaway Jr. wrote the opinion, joined by Chief Judge D. Brooks Smith and Judge David J. Porter.

Sacks Weston Diamond LLC was also lead counsel for the plaintiffs. Littler Mendelson PC represents Uber.

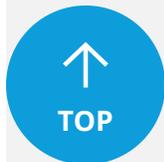
The case is Razak v. Uber Technologies Inc., 3d Cir., No. 18-1944, 3/3/20.

(Updated with additional reporting throughout. Previous revisions clarified the court's ruling and added more attorney information.)

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