



Written by [Bob Adelman](#) on September 2, 2015

Lawsuit by Three Uber Drivers Could Overturn the Gig Economy

On Tuesday a district court judge [ruled](#) that a lawsuit brought by three Uber drivers can move forward as a class action lawsuit, potentially involving 160,000 Uber drivers, increasing the chances that Uber will have to start treating them as employees, not as independent contractors. If so, the ramifications would be significant across the nascent but growing “gig” economy, affecting other companies such as Lyft, Airbnb, and TaskRabbit.



Back in March Uber attempted to have the suit tossed, but U.S. District Court Judge Edward Chen said the issues raised were too important not to have them heard in court. At that time Chen said the company’s drivers “are Uber’s presumptive employees because they ‘perform services’ for the benefit of Uber.” But the real question about how precisely to classify an Uber driver is a “mixed question of law and fact that must be resolved by a jury.”

On the surface an independent contractor is one who, according to LegalZoom,

- Supplies his or her own equipment, materials and tools;
- Can be discharged by the company at any time;
- Can choose whether or not to come to work without fear of losing employment;
- Controls his own hours of employment; and
- Considers each task or “gig” as a temporary assignment.

But the question rapidly becomes murky when the “economic realities test” is applied, such as just how much of the driver’s total income comes from driving for Uber, how much control Uber has over the driver’s performance, whether fares are fixed in advance by the company or not, and how stringent the requirements are for a driver to qualify for the position.

There’s also the “right to control” test applied often by courts considering the distinction between contractor and employee. If Uber controls how the service is delivered rather than offering suggestions about how to deliver it, courts rule toward “employee” rather than “contractor.”

How Uber markets itself is also an issue. In conflicting testimony the company has described itself as an “app” company, merely connecting customers with drivers in a particular area via the Internet. Elsewhere, however, it has characterized itself as a “transportation” company, leaving itself open to being the employer of drivers rather than a contractor of independent drivers.

Uber requires each aspiring driver to complete an extensive application form, submit to a background check, along with a “city knowledge test,” and be interviewed by an Uber executive for at least an hour. Once hired, the newly minted driver signs a contract that looks like an independent contractor agreement, spelling out the “fee” that the driver will receive upon the completion of a ride. The fee is



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typically 80 percent of the fare paid by the customer to Uber.

During the hearing leading up to Tuesday's decision, Uber submitted more than 400 sworn statements by Uber drivers expressing their interest in being treated as independent contractors, claiming that they enjoyed the flexible hours, the freedom to work as often or as little as they wished, and not having to punch a clock or sit at a desk.

Chen dismissed those statements claiming that they could have been biased and not reflective of the reality experienced by Uber drivers in general.

If Uber loses, it will likely face back taxes and penalties and will have to pay Social Security, health insurance, and workers' compensation costs, as well as tolls, fuel, and car repairs for its drivers in the future. That would cause fares to go up and business to decline as Uber would become just another taxi service.

At the moment, and for the foreseeable future, Uber drivers will continue to drive their own cars, pay their own expenses, pick up customers as they come online, and work to build a good reputation to ensure a future stream of customers. Customers will continue to enjoy faster pickups, lower fares, and a pleasant interaction with the driver seeking to build his brand.

Those drivers will, unless and until the rules are changed, continue, as expressed by Airbnb's CEO, Brian Chesky:

to live in a world where people can become entrepreneurs or micro-entrepreneurs, and if we can lower the friction and inspire them to do that, especially in an economy like today, this is the promise of the sharing economy.

But if the judge decides against Uber, he will support the negative position taken by liberal Robert Reich, President Bill Clinton's secretary of labor, that in the "gig" economy

there is no economic security, there is no predictability, and there is no power among workers to get a fair share of the profits.

You and I and everybody else, if present trends continue, will be selling what we do to the highest bidder.

As if that were a bad thing.

A graduate of an Ivy League school and a former investment advisor, Bob is a regular contributor to The New American magazine and blogs frequently at www.LightFromTheRight.com, primarily on economics and politics.

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