

Labor Ruling Could Jeopardize Uber's Business Model

Uber's business model may be in trouble if a California Labor Commission's finding that Uber drivers are employees, not independent contractors, is followed by California courts.

Uber, the ride sharing service, has maintained that it merely provides "administrative support" through a "technology platform" that "private vehicle drivers and passengers use to facilitate private transactions." Uber asserts that the drivers are not employees but rather independent contractors. However, the California Labor Commission found otherwise.

An Uber driver filed a complaint to recover mileage, arguing that she was an employee. The Commission agreed, finding that Uber's model was similar to providing taxi services, whose drivers are deemed employees.

"Plaintiff's work was integral to Defendant's business," the Commission's order found. "Defendants are in business to provide transportation services to passengers. Plaintiff did the actual transporting of those passengers. Without drivers such as Plaintiff, Defendants' business would not exist."

The opinion rejected Uber's claim that it was just a "neutral technology platform," finding "The reality, however, is that Defendants are involved in every aspect of the operation. Defendants vet prospective drivers, who must provide to Defendants their personal banking and residence information, as well as their Social Security Number. Drivers cannot use Defendants' application unless they pass Defendants' background and DMV checks."

Uber also controls the "tools" the drivers use by requiring the cars to be registered and less than 10 years old. Uber sets the price that passengers pay for the ride. "Defendants monitor the Transportation Drivers' approval ratings and terminate their access to the application if the rating falls below a specific level (4.6 stars)."

The Commission ordered Uber to reimburse the plaintiff \$3,878.08 for mileage and toll charges.

The Labor Commission's June 3, 2015 decision was made public when Uber filed a court appeal in San Francisco. The California Labor Code provides that the appeal will be heard *de novo*, which means the court will hear it as if it were a new trial

Barbara Berwick v. Uber Technologies, Inc., San Francisco County Superior Court No. CGC-15-546378, filed June 16, 2015.

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