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Boston-based attorney argues Uber's star ratings are racially biased



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Boston-based labor attorney Shannon Liss-Riordan has alleged in a federal filing that the ride-hailing company's one-to-five-star rating system for drivers is racially discriminatory because of passengers' biases.

By Dan Adams | GLOBE STAFF OCTOBER 07, 2016

Boston-based labor attorney Shannon Liss-Riordan has opened a new front in her war with Uber, alleging in a federal filing that the ride-hailing company's one-to-five-star rating system for drivers is racially discriminatory because of passengers' biases.

The complaint to the US Equal Employment Opportunity Commission centers on Thomas Liu, a former California Uber driver who says he was permanently "deactivated"

from the Uber network last year after his average customer rating fell below 4.6 stars. Liu believes he received unfairly low ratings from passengers because he is Asian.

The case is, in part, an attempt by Liss-Riordan to turn Uber's own logic back on itself: The company has refused to add a tipping function to its app, saying [unconscious racial biases would result in white drivers unfairly earning more in tips than black drivers](#). If that's true, Liss-Riordan argued, the same unconscious racial biases should contaminate the passenger ratings that Uber uses as a basis for kicking drivers off its network.

"Uber can't just say, 'Customers rule,' when Uber itself has said its customers discriminate," Liss-Riordan said in an interview Thursday. "Employers have to serve as [an] intermediary force to ensure workers are not suffering discrimination based on customers' preferences and biases."

An Uber spokeswoman declined to comment on the complaint.

Liss-Riordan does not have data from Uber's system showing drivers of some races consistently receive lower ratings. She is hoping the EEOC case will allow her to obtain ratings data from the company.

Uber has said the threshold for drivers varies depending on the average rating in each regional market, and that drivers with low ratings receive multiple warnings before being deactivated. But it's not clear whether drivers with low ratings are automatically removed from Uber's system or manually removed by an Uber manager who reviews other variables first. Anecdotally, drivers have said the minimum rating is usually above 4.5.

Filing the EEOC case is also a legal maneuver by Liss-Riordan in her primary battle to have drivers treated as full employees of Uber, not independent contractors, a designation that would entitle them to greater benefits and protections.

She had previously tried to get Uber classified as an employer with a class-action lawsuit on behalf of drivers in California and Massachusetts. But a settlement Liss-Riordan reached with the company would have allowed Uber to continue [classifying drivers as](#)

[independent contractors](#), in exchange for paying up to \$100 million to drivers and agreeing to deactivate drivers only for sufficient cause. That settlement is now in peril after [a federal court ruling in September](#) said drivers have to arbitrate disputes with Uber individually instead of together in class-action suits.

The EEOC, however, has in past cases determined that independent contractors should be considered employees if the company that pays them exercises close control over their work. Liss-Riordan is gambling the EEOC will make a similar determination in Liu's case, which would give her a favorable ruling from a federal agency that she can then brandish in court on behalf of drivers.

"This issue is going to be decided eventually," Liss-Riordan said. The federal complaint "is just another way it can be adjudicated."

An EEOC spokesman declined to comment on the complaint, which Liss-Riordan filed in May. The agency does not publicly disclose complaints. She provided a copy of it to the Globe Thursday.

Some academic studies show customer evaluations can be influenced by racial bias. Analyzing questionnaires completed by restaurant patrons, two professors at Cornell University's School of Hotel Administration concluded in [a 2011 paper](#) that "customers rated the promptness and attentiveness of same-race servers more favorably than different-race servers." Without proper controls, using customer feedback surveys to determine compensation could subject companies to lawsuits, they said, adding that "customer appraisals should not be used if racial biases are evident."

That study was conducted by Michael Lynn and Michael C. Sturman. However, Uber has cited similar work by the same two researchers in defending its tipping policy.

"Uber has not been hesitant to take inconsistent positions," said Harvard Business School professor Ben Edelman, has studied [discrimination in similar business venues such as Airbnb](#). "You can only play fast and loose on these issues for so long before competent adversaries take note and rub your nose in it."

However, Edelman said Uber might be able to counter Liss-Riordan's argument by showing its deactivation process is not based solely on customer reviews, or settle the case by agreeing to have its managers consider factors beyond the ratings before deactivating a driver.

"I suspect Uber could make some accommodation here," Edelman said. But that, he added, wouldn't answer whether the rating system is inherently biased.

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