

That Little Lawsuit Against Uber Just Got Bigger — And Could Take Down The Sharing Economy

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What began as a small lawsuit brought by four former Uber drivers against the tech-titan just expanded into a potentially industry-crippling class action suit that could force the company to rethink its entire business model.

Attorney Shannon Liss-Riordan first filed suit against Uber back in 2013, on behalf of four Uber drivers in San Francisco who wanted the company to reimburse them for their business expenses. Uber claims it's not required to pay for things like gas, insurance, and car-maintenance since drivers are not employees, but rather independent contractors.

This past September, US District Court Judge Edward Chen granted the suit class-action status, clearing the way for drivers across the state to be included. Uber then tried to limit the size of that class, by saying many of its drivers had signed an "arbitration clause" — a legal agreement designed to force employees to settle grievances outside of the courts — that barred them from filing suit. Uber quietly inserted the clause into its driver agreement back in 2014.

But on Wednesday, US District Court Judge Edward Chen rejected the validity of the arbitration clause, expanding the group of drivers eligible to sue Uber to as many as 160,000. He called the clause "both procedurally and substantively unconscionable," since there was no clear way for drivers to opt out.

"Many thousands more Uber drivers will be covered by the case and entitled to recover back wages if we prevail," Liss-Riordan told VICE News after the ruling. "We are looking forward to the trial next June"

At issue is how Uber classifies its massive fleet of drivers, who bring in over \$2 billion in revenue for the tech company every year. The suit asks for back pay and reimbursement for drivers' expenses, and demands the company completely revamp its relationship with drivers.

While hundreds of thousands of drivers make their living through Uber the company has chosen to classify them as 'independent contractors'— as a result, it doesn't have to pay their health insurance, workers' compensation, or assume any of the other liabilities typical employers are required to take on.

In a statement emailed to VICE News, Uber said it's obvious that drivers do not work for the company, but are independent business people.

"Drivers use Uber on their own terms; they control their use of the app along with where and when they drive," the company said. "As employees, drivers would lose the personal flexibility they value most."

Of course, if drivers gained employment classification Uber would also have to follow minimum wage laws and other costly regulations that regular employers are required to follow.

Liss-Riordan, the attorney representing the drivers, rejected equating flexibility with independent contractor status.

"We are not challenging Uber's system of providing flexibility for its workers," she said. "Uber has decided its system works best with drivers deciding when to log on. Nothing about our case challenges that aspect of the system. We are simply saying that when

drivers are working for Uber, they are under the law Uber's employees and must receive the wage protections that employees receive."

The charge of misclassification of employees is complex legal issue — it hinges on what degree of control the company exercises over workers. In California, the primary test, according to the California Department of Industrial relations, is whether the employer — in this case Uber — "has control or the right to control the worker both as to the work done and the manner and means in which it is performed."

Employee classification is decided on a case-by-case basis, and courts draw upon prior lawsuits, as well as regulatory decisions to decide whether a set of workers are contractors or employees. This summer, in a sign that California regulators may favor Liss-Riordan's position, the California Labor Commission ruled Uber driver Barbara Ann Berwick was indeed an employee of the company and not a contractor. "Without [her] Uber would not exist," the commission said in a ruling that granted Berwick over \$4,000 in expense reimbursements.

Drawing on the same logic as the labor commission, Liss-Riordan has argued that since Uber can fire its drivers, compel them to accept a certain portion of rides, and enforce workplace standards, it effectively operates as an employer under California law. But Uber has long maintained that since drivers make their own hours, and can use the app whenever they see fit, the role of the company is that of a facilitator, and not an employer.

The ongoing case is viewed as a bellwether for the future of the driver-Uber relationship. And for the past two years, Liss-Riordan has been locked in a public relations brawl with the company over the preference of the company's drivers. After Uber presented the court with testimony of 400 drivers who claimed to want to remain independent contractors, Liss-Riordan's went and found 50 of those drivers who claimed they actually would want to be employees after all, and misunderstood the questionnaire Uber asked them to fill out.

The case is being closely watched because it could have wide ranging impact on the so-called "sharing economy." Dozens of major tech companies like Taskrabbit, HomeJoy, and Uber competitor Lyft also structure their worker relationships the same way.

After Chen's ruling on Wednesday, Uber took pains to emphasize that the ruling had nothing to do with the merits of the independent contractor argument. The ability to get a class action lawsuit certified is not an indication that the plaintiff's will win, the company explained, with a spokesperson adding that the company's leaders are very confident that they will prevail when the suit goes to trial in June.