

Bay Area's food-delivery boom and its ethical dilemma

By [Jonathan Kauffman](#) | October 23, 2015



Cynthia Marciano has been driving for DoorDash since October 2014, and up until July, she loved the work. The 30-year-old had been in customer service — sandwich shops, pool halls — for most of her career, but DoorDash was different: The on-demand delivery service has let her choose her lunch and dinner shifts and set her own income goals, usually \$600 a week.

This summer, the Palo Alto company let her know that it was dropping the fee it paid drivers from \$7 to \$5 per delivery, while eliminating the double fee for large orders. Though Marciano makes tips, too, she can only make two deliveries an hour. “It upset all the drivers,” Marciano says. “We were basically losing 30 percent (of our income). It occurred to me that there was a possibility that I wouldn’t make minimum wage.”

Which is how Marciano became the named plaintiff in a lawsuit filed against DoorDash in California Superior Court last month, demanding the company classify its drivers as employees, not independent contractors.

The case has barely caught the attention of Bay Area diners and restaurants — but it should.

The lawyer behind all of these lawsuits is Shannon Liss-Riordan, who is public enemy No. 1 in the realm of on-demand delivery. A major class-action suit against Uber is well on its way, and the Boston attorney has recently filed similar suits against food-delivery companies Caviar, GrubHub and Postmates. (The Chronicle reached out to most of these companies, which either declined to comment on the case or didn't respond.)

The lawsuits all make the same argument: If your company tells drivers where to go, sets standards for their work, requires them to sign up for shifts, and even gives them a uniform, the California Labor Code considers them employees, and you should also pay for their gas mileage, auto upkeep and cell phone.

It's surprising that so few of us are paying attention. "We eat ethically" is practically inscribed on the San Francisco city flag. Voters here don't just care about where our food comes from — we protect the people who make it.

Few cities in the United States have shown themselves more willing to extend basic income protections to restaurant workers. In 2007, Healthy SF gave dishwashers, cooks and waiters access to rudimentary health insurance. Then, in 2014, San Francisco voters passed a law that would raise minimum wage to \$15 by 2018. Oakland, Emeryville and Berkeley have all passed similar wage hikes, and Silicon Valley cities appear to be following suit. These haven't been narrow victories, either.

So why would the rights of food-delivery workers slip our attention?

Is it because, as the many job ads on Craigslist advertise, companies like DoorDash and Postmates promise prospective drivers they'll make up to \$25 an hour, neglecting to mention

they have to subtract the cost of car, gas and phone bills? Is it because we, too, buy into the idea that if your employer gives you any degree of autonomy you should pay additional taxes?

Or are we so thrilled to take advantage of delivery that we refuse to think about the people who show up at our houses with biodegradable takeout containers in hand?

Online delivery has obvious benefits for diners dealing with busy jobs and busy toddlers. For restaurateurs, there's a clear advantage, too: Delivery services externalize labor costs. These small businesses already contend with rising food costs, rising labor costs and rising rents. The extra income delivery brings may be keeping them afloat.

Several weeks ago, GrubHub, which provides delivery services to 35,000 restaurants in 900 cities, reported that restaurants who signed up for its service saw more than a 20 percent increase in their takeout revenue. (GrubHub also pointed out to The Chronicle that most participating restaurants provide delivery themselves.)

The benefits don't preclude both diners and restaurants from demanding delivery companies conform to California labor laws.

Marciano certainly would like compensation for gasoline and maintenance of her car. In fact, her car recently broke down, so she can't even work. "If I was an employee," she says, "they could help me out so I could get back on the road to help this business thrive and give good customer service."

Besides, there is another way. Reggie Hunter, manager at the Mill Valley branch of Cafe del Soul, says that the cafe's two locations began offering food delivery in May. They've bought two Smart cars for each location and cell phones for their drivers. They pay their dozen-plus drivers — all employees — more modest wages of \$11 an hour. But sick time is included, and drivers keep their tips.

The investment has paid off: Deliveries now account for an eighth to a quarter of Cafe del Soul's daily sales. "It is much easier to go the route of GrubHub," Hunter says, "to put the responsibility

on the individual and not take the cost of purchasing and maintaining vehicles. But with most of the things we do — we're almost entirely organic — we wanted to do it right.”

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