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Client Alert

'Sharing Economy' Woes: California Uber Drivers Can Pursue Wage Claims as a Class

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Much of the success of "sharing economy" companies like Uber, Postmates, and Lyft has been attributed to their business model, in which the company (and its technology platform) serves as a go-between for consumers and individual workers looking to sell their services. In the case of ride-sharing companies like Uber and Lyft, the drivers who perform services are treated as independent contractors who drive their own vehicles, pay their own expenses, and set their own schedules. This model, and the broader trend of classifying workers as independent contractors, has become the focus of government agencies, like the U.S. Department of Labor and state workers' compensation boards. And these companies, especially Uber and Lyft, have been the subject of numerous lawsuits alleging that drivers are actually employees and are owed wages and are entitled to workplace protections. These lawsuits can create liability for the alleged employer for injuries caused in the course of performing work.

Recently, in one such lawsuit, Uber drivers won a procedural victory when a federal judge in the Northern District of California issued a decision permitting certain Uber drivers to pursue their claims for unpaid tips as a class. The court held that the claims, which require resolving the threshold question of whether the drivers are properly classified as independent contractors, can be resolved for the entire class.

Uber argued against certification of the class on the basis that there are many differences between the 160,000 proposed class members that would require their claims to be analyzed on a case by case basis. Uber also argued that the named plaintiffs are not adequate representatives for the proposed class because drivers actually prefer the flexibility and other perks of operating as independent contractors, as demonstrated in declarations submitted by 400 drivers. The Court rejected these arguments on the basis that the individual differences between drivers do not eliminate the common allegation that all of the class members have suffered the same alleged misclassification, and Uber's 400 declarants were only a "small fraction" of its California drivers and did not appear to be a representative sample of the class.

However, the Court's decision was not a total win for the plaintiffs. The Court denied the plaintiffs' request to certify a class for their claim seeking indemnification of business expenses. The Court also limited the scope of the class to those who have driven for UberBlack, UberX, and UberSUV at any time since August 16, 2009, signed up to drive under their individual names, were paid directly by Uber or an Uber subsidiary, and did not enter into certain Uber agreements containing arbitration clauses.

The Court's decision last week is, of course, not the end of the story. Because the Court previously denied Uber's motion for summary judgment, the question of whether the class members have been misclassified is to be decided by a jury. But it does increase the risk that a large number of Uber drivers will be determined to be employees, which could serve as precedent in the other litigation against Uber, Lyft, and similar companies.

Such determinations could seriously impact the "sharing economy" business model and the high valuations of companies like Uber and AirBnB. We will continue to monitor developments in this area. In the meantime, companies that engage workers as independent contractors should be aware that they may be subject to scrutiny and should review existing relationships to ensure that independent contractors are properly classified.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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