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Tax Alert



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Uber Driver Is An Employee, Rules California. There Goes That \$50B Valuation

Uber is facing suits from injured parties and drivers themselves claiming they *really* work for Uber as employees. That would import a panoply of taxes, fringes and liabilities and could dampen that soaring valuation. Now, Uber drivers are a step closer to employee status, with a [ruling by California's Labor Commission](#) that a single Uber driver is actually an employee, not an independent contractor. The fact that [California says an Uber driver is an employee](#) doesn't make it so, as Uber has already appealed.

The amount at stake is only \$4,152.20 for a two-month period when Barbara Ann Berwick worked as a driver. But the bigger question involves *billions*. Uber said it did not exert any control over the driver, but the Labor Commission said Uber is "involved in every aspect of the operation," from vetting drivers and their vehicles to setting rates for trip fares. Uber's arguments that it just matches passengers and drivers fell on deaf ears.

"Defendants hold themselves out as nothing more than a neutral technological platform, designed simply to enable drivers and passengers to transact the business of transportation," the ruling states. "The reality, however, is that defendants are involved in every aspect of the operation."



(AP Photo/Eric Risberg, File)

The Commission said Uber controls the tools driver use, monitors their approval ratings and terminates their access to the system if their ratings fall below 4.6 stars. And Florida is active too, where a state agency also ruled that [Uber drivers are employees](#). What's more, Uber still faces a federal lawsuit by its drivers. A San Francisco jury may end up ruling on their status.

Uber promises good open-ended pay, flexible hours, even discounts on vehicles. But employee status? No way. Health and dental coverage? Tax withholding? Nope. Although one ruling in California and one in Florida are not conclusive—and they may end up being reversed—these cases and many others like them will be watched. Recently, a [survey showed that contract workers](#) for Uber and numerous other companies don't get benefits and have trouble getting them on their own.

The battle over the independent contractor versus employee designation has been underway for decades, and extends beyond ride-sharing companies. [It's been a long-running issue at FedEx](#), which operates with a similar contractor setup with its ground delivery drivers. That's brought class-action lawsuits, and efforts to change state laws to put liabilities on the companies.

Uber and Lyft [now face similar suits over](#) whether they should be footing the bill for things like gas and vehicle maintenance. Uber's latest [\\$1.2 billion in financing](#) and more than \$40 billion valuation make it a valuation darling, but it's PR problems are huge. It seems often to ruffle rather than smooth feathers. As it fights regulatory and public relations battles, are tax authorities going to crack down too? It isn't just the ubiquitous IRS that may want to hitch a ride to cash in. Consider state tax agencies and even some foreign ones.

Some [Uber drivers have sued](#) claiming the company takes too large a cut of tips. An even bigger legal exposure is accident liability, and there are already some big cases involving injuries and even death. When a driver has an accident that injures the passenger or a third party, there is recourse to the drivers and their insurance.

Yet a serious or fatal accident can involve millions, far exceeding driver insurance policies. Uber is a clear target, unless the [Communications Decency Act of 1996](#) prevents liability. But it is not far-fetched to imagine verdicts for injured plaintiffs, no matter how the legal niceties are observed. With taxi companies and in many other industries, the law has been sorting out similar issues for decades. The contracts and the actual course of conduct of the parties are likely to count.

[Independent contractor vs. employee characterization](#) questions span medical malpractice cases, tax disputes, worker compensation and unemployment matters and more. Even employment discrimination and sexual harassment cases. As many tax, employment, insurance and labor disputes reveal, workers labeled as independent contractors may be employees. Arrangements can be genuine or can be independent in name only, with no chance of standing up against the IRS, other agencies or the courts.

Who might be even more aggressive than accident victims? Taxing authorities. The IRS and state taxing agencies could benefit nicely by getting tax withholding money from Uber on pay to the drivers. And while it is by no means certain that the IRS and state tax agencies will try, it is not certain they will not. With Uber's vast valuation, expect more lawsuits, whatever the drivers may be called. As with franchises, Uber may test the legal limits, but consider such basics as:

- The employer's control over the worker;
- The worker's opportunity for profit or loss;
- The worker's investment in facilities;
- The worker's skill set; and
- The duration of the relationship.

If a driver must obey many rules and is subject to the control of Uber, a court could find employee-employer liability. So could a taxing agency. Workers may be labeled as "independent contractors," but labels aren't enough for the IRS. Uber has roiled the marketplace. But taxing and employment agencies that stand to make money off employees and not off independent contractors are likely to be watching.

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