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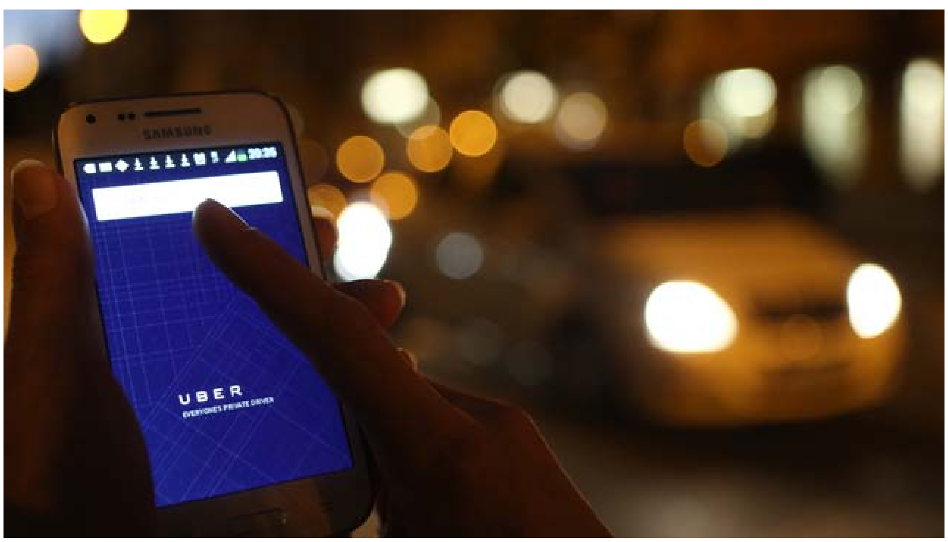
Florida Says Uber Drivers Are Employees, But FedEx, Other Cases Promise Long Battle

Uber promises good open-ended pay, flexible hours, even discounts on vehicles. But employee status? No way. Health and dental coverage? Tax withholding? Nope. Darrin McGillis was a driver in Florida who was in a car accident so could no longer pick up passengers. Buzzfeed reported on the case in which McGillis couldn't get Uber to help, so he filed for unemployment. Hey, I qualify since I'm effectively an employee, McGillis claimed.

Sure enough, the Florida Department of Economic Opportunity agreed with him that he was actually an employee. Predictably, Uber disagrees with the decision and will surely fight it vigorously. A separate report on McGillis's case in *The Miami Herald* notes that Uber has managed to get similar state decisions overturned. Although the case only involves one Uber driver and in Florida at that, this case and the inevitable others like it 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.



Although this is just one specific case, and only in one state, 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 its competitor Lyft now face similar suits over whether the two companies (and others like them) 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.

It is a tech company, it claims, and just takes a fee for putting passengers and drivers together. Clearly, these drivers aren't employees of the car services–er tech company–at least on paper. Besides, neither the company nor the drivers are likely to even *think* there is an employment or agency relationship viz. third parties. Or is there?

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.

And who might be even more aggressive in collecting 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 not make a grab for it, it is also not certain that they will not.

After all, look at some companies as FedEx, which has for years fought vigorously to defend its independent contractor method of operation. The delivery giant mostly won, until a key Ninth Circuit ruling that [FedEx misclassified its drivers as independent contractors].

Usually, an agency requires a principal and agent like an employer and employee. And the agencies might not be able to stand up to the Uber powerhouse. But even franchise operations have sometimes succumbed to recharacteriation battles. Take Domino's Pizza, where each store is independently owned, but a [$32M verdict says there can still be liability to the company].

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 have 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. In that sense, all of the upheaval isn't over. Uber may be making itself more and more attractive as a target with a very deep pocket.

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