

## Drivers' Class Action Against Uber Over Wages Gets Green Light

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A prospective class action in which Uber drivers alleged the company did not pay them wages, overtime, and made them cover their own expenses in violation of federal employment law has been allowed to move forward.

The dispute revolved around the drivers' claims that they had been misclassified by Uber as independent contractors when they were, in fact, employees. Uber moved for the dismissal of their case and for the court to compel arbitration.



*Judge Michael Baylson*

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Baylson said, "Here, the arbitration provision contains a broad delegation clause, which states that 'disputes arising out of or relating to interpretation or application of this arbitration provision, including the enforceability, revocability or validity of the arbitration provision or any portion of the arbitration provision ... shall be decided by an arbitrator and not by a court or judge.'"

He noted, however, "the arbitration provision also contains a conspicuous opt-out provision, which allows for the resolution of disputes between drivers and Uber in a court of law."

The plaintiffs complied with the requirements of that opt-out, Baylson said, by sending "formal notice" in the form of a letter.

Uber argued that even if the court ruled the opt-outs were in effect, it must still dismiss the case because prior Uber agreements contained arbitration clauses from which the plaintiffs never opted out. The prior agreements between Uber and the drivers, the company argued, must be enforced.

But Baylson said that one of the former agreements contained a merger clause.

"Because the arbitration provision contains a merger clause, the court will not substitute this valid agreement to arbitrate with a prior arbitration provision that has been superseded," Baylson said. "The arbitration provision is valid, plaintiffs took advantage of their putative right to opt out from defendants' arbitration dispute resolution scheme, and this action will proceed."

Uber’s attorney, Matthew Hank of Littler Mendelson, did not return a call seeking comment. Uber’s corporate media office did not immediately respond to a request for comment.

The attorney for the drivers, Jeremy Abay of Sacks Weston Diamond, said he was pleased that Baylson “took a practical approach in recognizing the opt-out notice.”

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