

Philly Limo Drivers Defend OT Allegations Against Uber

By **Dan Packel**

Law360, Philadelphia (November 28, 2016, 3:45 PM EST) -- Philadelphia-based Uber limo drivers accusing Uber Technologies Inc. of violating the Fair Labor Standards Act urged a federal judge Monday not to grant the ride-hailing company's request to dismiss several of their overtime claims, pointing to Third Circuit precedent.

The drivers defended their allegations that the company failed to pay overtime wages for time worked in excess of 40 hours per week, claims that were expanded in an amended complaint filed in October.

That month, U.S. District Judge Michael Baylson had asked them to revisit their overtime accusations in light of the 2014 *Davis v. Abington Memorial Hospital* case.

"Under *Davis*, plaintiffs were required to allege 'a given workweek' in which each plaintiff worked over 40 hours without receiving overtime pay," the drivers said Monday. "Since the original complaint was lacking in this respect, plaintiffs were given leave to allege examples of such a workweek. That is exactly what plaintiffs did."

The suit, originally filed in Pennsylvania state court in January and removed to federal court by Uber the following month, alleges that Uber violated the FLSA, the Pennsylvania Minimum Wage Act, and the Pennsylvania Wage Payment and Collection Law by misclassifying its so-called UberBlack limo drivers as contractors, failing to pay minimum wage or overtime, and requiring the drivers to cover their own business expenses.

Judge Baylson's **October ruling** cited the 2014 *Davis* ruling in order to advance the minimum wage claims. With regard to minimum wages, that case stated that plaintiffs do not have to allege a "particular week" in which "their hourly wage fell below the federal minimum."

But for overtime wages, the judge said *Davis* required that the plaintiffs allege "a given workweek" in which each driver worked over 40 hours without receiving overtime pay.

In a filing later in October, Uber took issue with the drivers' amended complaint, saying that it did not show they were "employed" during the alleged overtime hours.

But on Monday, the drivers responded that Judge Baylson had already concluded that the original complaint demonstrated they were employed by Uber.

They also said Uber had waived the issue by not raising it when the company filed a motion to force the case into arbitration in July.

The drivers additionally said it was unreasonable for Uber to ask the court to heighten the *Davis* standard and obligate them to allege facts that showed they were "employed" during the overtime hours in question.

They defended the language of the complaint against Uber's motion to strike a series of allegations about the company's business practices — in particular, its supposed practice of

favoring UberX drivers, who recently saw their services legalized in Philadelphia, over UberBlack limo drivers.

"All of the foregoing allegations relate to plaintiffs' misclassification and wage claims," the plaintiffs said. "Indeed, the targeted allegations speak to the egregious level of control defendants exert over plaintiffs."

The drivers are represented by John K. Weston and Jeremy E. Abay of Sacks Weston Diamond LLC.

Uber is represented by Robert W. Pritchard, Paul C. Lantis, Wendy Buckingham of Littler Mendelson PC.

The case is Ali Razak et al. v. Uber Technologies Inc. et al., case number 2:16-cv-00573, in U.S. District Court for the Eastern District of Pennsylvania.

--Additional reporting by Y. Peter Kang. Editing by Catherine Sum.