

## Uber Can't Escape Philadelphia Limo Driver FLSA Suit

By **Y. Peter Kang**

Law360, Los Angeles (October 7, 2016, 6:58 PM EDT) -- A Pennsylvania federal judge Friday declined to dismiss a proposed class action filed by Philadelphia-based Uber limo drivers accusing the ride-hailing company of violating the Fair Labor Standards Act, saying the bulk of the drivers' wage claims were reasonable enough to allow them to move forward.

U.S. District Judge Michael M. Baylson said Ali Razak and other drivers' claims that Uber Technologies Inc. failed to pay minimum wage in violation of the FLSA and state law were sufficiently pled to survive Uber's bid for a judgment on the pleadings. However, the judge ruled that a handful of the drivers' claims that they weren't paid overtime were dismissed with leave to amend.

Judge Baylson said under the Third Circuit's precedential **2014 ruling** in *Davis v. Abington Memorial Hospital*, which held that workers aren't required to provide exact dates and times they worked overtime to survive a motion to dismiss, the limo drivers' minimum wage claims contained sufficient detail to have put Uber on notice.

"The instant complaint presents a close case because plaintiffs have not explicitly alleged that their average hourly wage fell below the federal minimum during any particular week, which would have squarely satisfied the standard announced in the overtime context in *Davis*," the judge wrote in a 22-page ruling. "Construed liberally, however, plaintiffs' complaint contains sufficient factual allegations to permit the court to allow the reasonable inference that plaintiffs were not paid minimum wage."

However, Judge Baylson said that under the Third Circuit's *Davis* ruling, the limo drivers didn't properly allege unpaid overtime in violation of the FLSA, saying the claims were not sufficiently alleged.

"While plaintiffs state the legal conclusion that defendants failed to pay plaintiffs 'an overtime premium for hours worked in excess of 40 hours in a work week,' nowhere do they allege to have worked in excess of 40 hours in a workweek, let alone that there was any given week in which they were not paid overtime," he said.

The judge dismissed the overtime claim without prejudice but with leave to amend within 14 days.

A breach of fiduciary duty claim was dismissed with prejudice after Judge Baylson ruled that the drivers didn't prove they had a fiduciary relationship with Uber that involved "special trust," but rather a typical employer-employee relationship.

An attorney for the drivers, John Weston of Sacks Weston Diamond LLC, told Law360 on Friday they were satisfied with the ruling.

"We thought it was a well-considered decision, except, of course, for the court's ruling on [the breach of fiduciary duty claim]," he said. "The complaint can easily be amended to cure the remaining objections."

Representatives for Uber did not immediately respond to requests for comment.

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.

**In July**, Judge Baylson denied Uber's request to compel arbitration, saying the drivers opted out of Uber's arbitration agreement and can't be forced into it now.

Razak is 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 Cara Bayles. Editing by Orlando Lorenzo.