

NEWS

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Uber Drivers May Be Due Pay for On-Call TimeFrom [Daily Labor Report](#)

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By [Jon Steingart](#)

Uber drivers might be entitled to pay for the time they spend waiting for calls, a federal judge in Pennsylvania ruled Dec. 14 (*Razak v. Uber Techs., Inc.* , 2016 BL 417468, E.D. Pa., No. 2:16-cv-00573, 12/14/16).

"A large portion of the value that Uber provides to customers is that drivers get to the customer in a certain amount of time," Jeremy Abay, an attorney for the drivers, told Bloomberg BNA Dec. 16. To do that, he said, they have to drive to areas where potential customers are likely to be. Even if they receive no calls, they incur expenses for gas, insurance and tolls, Abay said.

"While it might be one of the first cases to address this issue in the gig economy context, the on-call issue is not a novel issue," Abay said. It also comes up for ambulance drivers who have to sit with little to do until a call requires them to drive to a location, he said.

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The on-call time issue reaches beyond Uber and emergency transportation to workers in all sorts of industries. For example, is an office worker who is expected to respond to e-mails on her mobile phone when she's at home entitled to pay for those hours?

Facts to Be Developed Further

Drivers Ali Razak, Kenan Sabani and Khaldoun Cherdoud proposed to represent a class of people who provided sedan services via Uber Technologies Inc. and Philadelphia subsidiary Gegen LLC's app. They were deprived of overtime when they worked and were on call for more than 40 hours in a week, they said.

On-call time is compensable under some circumstances. But a multifactor analysis used in the controlling Third Circuit isn't quite on point because it resulted from a case that was further along in the discovery process, Judge Michael Baylson of the U.S. District Court for the Eastern District of Pennsylvania said. He ordered limited discovery to help resolve the compensability question.

"I believe our case will be the first to look at it in discovery," Abay said. "We can't get to the legal issue without developing the facts of the case more."

An Uber representative declined to comment Dec. 16.

Abay is with Sacks Weston Diamond LLC in Philadelphia, where John Weston also represents the drivers. Littler Mendelson P.C. attorneys Paul Lantis and Wendy Buckingham in Philadelphia and Robert Pritchard in Pittsburgh represent Uber and its subsidiary.

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