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Uber's Minimum Wage Suit Moves Forward in Philadelphia

P.J. D'Annunzio, The Legal Intelligencer

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A prospective class of Philadelphia UberBLACK drivers were given the green light to move forward with their lawsuit alleging the company failed to pay them the federal minimum wage of \$7.25 an hour.

U.S. District Judge Michael Baylson of the Eastern District of Pennsylvania denied Uber's motion on Oct. 7 to dismiss the minimum wage claim filed by drivers Ali Razak, Kenan Sabani and Khaldoun Cherdoud. Baylson did, however, dismiss the drivers' claims that the company violated the Fair Labor Standards Act by not paying them overtime.

UberBLACK gives customers the option of selecting a luxury car—or "black car"—for an increased fee.

Uber has been inundated with lawsuits from across the country, including others involving alleged labor violations. In New York federal court, Uber was sued by the New York Taxi Workers Alliance over minimum wage and overtime issues. A nationwide class action against the company was filed in Illinois over worker classification and the withholding of tips.

In the Philadelphia case, Uber argued the drivers' claims were insufficient because they failed to identify their pay rates and wages earned in a work week. The drivers responded that such figures were not "operative facts" and any lack of specificity was due to the fact that Uber failed to keep records on the hours employees worked, in violation of the FLSA.

In his opinion, Baylson said the drivers are not required to allege specifics about hours worked or wages earned because, under the FLSA, employers are supposed to keep track of that information.

"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," Baylson said. "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."

The drivers claimed that Uber automatically deducts expenses from their earnings, including regulatory fees for the Philadelphia Parking Authority, vehicle payments and insurance premiums.

"The aforesaid expenses are automatically deducted from the driver's earnings, regardless of whether the driver earned enough money to cover expenses," the drivers claimed.

An attorney for the drivers, Jeremy Abay of Sacks Weston Diamond, praised the judge's decision and criticized Uber for failing to give its drivers basic workplace rights.

"There is something fundamentally wrong with a company that is worth 65 billion dollars but refuses to afford its drivers—who are the heart and face of the business—basic workplace rights," Abay said in a written statement. "This case seeks to right that wrong, and we are pleased that, for a second time, the court has refused Uber's invitation to dismiss it."

As for the overtime claims, Uber repeated its argument that the drivers failed to show how long they worked and what they were paid. The drivers again claimed it was Uber's job to keep track of those figures.

Baylson sided with Uber in this instance.

"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 workweek' 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," Baylson said.

Matthew J. Hank of Littler Mendelson represented Uber and did not return a call seeking comment.

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