



Should Gig Workers Earn “On-Call” Pay? Federal Court Agrees To Examine Issue

Insights

12.20.16

The legal theories that are being lobbed at Uber in wage-hour lawsuits across the country show no signs of letting up. Earlier this year, a group of certified limousine drivers in Eastern Pennsylvania who provide services through Uber’s “luxury” UberBLACK platform filed a FLSA suit for unpaid wages, including a claim that they were owed wages for on-call time while they were logged into the Uber app. Last week, in a colorful opinion that references Mozart’s “Magic Flute” and Verdi’s “Rigoletto,” a federal judge green-lighted plaintiffs’ theory and ordered “expedited discovery” on the issue of compensability of the plaintiffs’ on-call time.

Importantly, this opinion does not reach the merits of the plaintiffs’ claims. Instead, the court concluded that the allegations that the plaintiffs “worked” while on-call, were required to wear certain business attire, and were subject to suspension and termination if they refused a fare were sufficient at the pleading stage to allow the plaintiffs to proceed with their claim. At a minimum, this opinion joins numerous others and signals a willingness to at least entertain the theory that a person providing services via an app or other on-demand economy device might be an “employee” for certain legal purposes.

That said, as Forbes Contributor Jeff Wald recently noted, the collective “freak out” over Uber lawsuits as an indictment of the on-demand economy is probably overblown. The battle lines are still being drawn, and at least thus far, instead of chilling the growth of the gig economy, an increasing number of mainstream companies are jumping in, despite prolific legal challenges. Uber, for its part, continues to vigorously defend legal claims and evolve their business model.

Sharing economy businesses would be wise to pay attention to the evolving legal landscape and mindfully look for ways to adjust and reshape their approach to contingent labor and benefit from the “talent revolution” that the on-demand economy is uncovering.