

Insights, News & Events

## UBER'S \$100 MILLION SETTLEMENT FALLS APART

Uncertain Times Ahead For Many Gig Employers

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In a surprising development, a federal court judge rejected a proposed settlement yesterday which would have seen gig giant Uber pay up to \$100 million to resolve a series of legal claims challenging its classification model, characterizing the proposed settlement as "not fair, adequate, and reasonable." While the shelved deal might end up actually helping Uber in the long run, the latest chapter in this long-running class action battle means that all gig companies will continue to live in a world of uncertainty when it comes to the thorny issue of misclassification.

### Background: Parties Reached A Tenuous Truce Earlier This Year

As [we reported earlier this year](#), the ride-sharing company Uber reached a preliminary \$100 million agreement to settle claims alleging that it improperly classifies its workforce as independent contractors. A pending class action lawsuit filed in California covered about 240,000 current and former Uber drivers who were seeking additional compensation, including being reimbursed for expenses and tips. A companion case was being litigated in Massachusetts alleging similar facts. The trial was slated to take place in June 2016, and a loss could have cost Uber hundreds of millions of dollars.

In April 2016, Uber announced that it had reached a preliminary agreement with the plaintiffs, filing a 153-page proposed settlement agreement outlining the terms of the deal. The arrangement would see the plaintiffs and their attorneys receive a guaranteed payment of \$84 million, with

### Related People



**Richard R. Meneghello**

Chief Content Officer

503.205.8044



**Todd B. Scherwin**

Regional Managing Partner

213.330.4450

the promise of an additional \$16 million provided the company's valuation continues to grow through an initial public offering. However, it needed to receive a final approval from the federal judge overseeing the case.

The intervening months have witnessed many warning signs that the deal was on shaky ground. Dozens of class members expressed negativity about the settlement agreement; numerous objectors filed motions with the court requesting that the judge reject the proposal, and at least five motions to intervene were filed by those wishing to formally join the litigation to have their voices heard. Much of the negative attention was focused on the lead plaintiffs' counsel, who stood to earn \$25 million in the settlement. At least one person filed a motion to disqualify her from the case, and at one point she agreed to trim her recovery by \$10 million.

Yesterday, in a 35-page ruling, U.S. District Court Judge Edward Chen denied the motion for preliminary approval of the proposed settlement, opening the door for the litigation to continue.

### **Court Acknowledged Significant Risks For Both Sides**

The court noted that both sides risked much if they continued to litigate the case. He noted that a pending challenge before the 9th Circuit Court of Appeals could result in the driver arbitration agreements being upheld as valid, which would shrink the California class of drivers eligible to participate in the class action from 240,000 all the way down to approximately 8,000.

Moreover, and more importantly for gig employers, the court noted that several factors existed that could lead a jury to one day decide that the drivers were independent contractors and not employees. For example, drivers are free to choose their own days and hours of work, they use their own vehicles, they can employ others to drive for them, and they signed an acknowledgement whereby they admitted they were not in an employment relationship with Uber.

On the other hand, the court said that Uber would also be risking a great deal by continuing to litigate the matter. "Uber also faces substantial risks of losing on the misclassification question," he said, pointing out that Uber exerts a certain amount of control over drivers while they are on duty which could lead to a jury finding in the plaintiffs' favor.

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He cited to another ruling in the similar class action case against Lyft, where the judge said that ride-sharing drivers could be favorably compared to “restaurant workers who work in multiple venues, but only occasionally at each particular venue.” There is no doubt, he said, that such a worker would be considered an employee of those restaurants, and therefore it was possible for Uber drivers to similarly be considered employees.

### **Proposed Monetary Settlement Rejected As “Relatively Modest”**

Regardless of the significant risk that might befall both sides if the case continued, and despite the deference that courts typically give to private parties that seek to settle their differences through a mutual resolution, the judge said that the proposed settlement was simply inadequate to satisfy standards of fairness. He noted that he could not consider the \$16 million portion of the settlement that was tied to a potential IPO because there was no evidence in the court record to demonstrate the likelihood that the contingency would be triggered.

While \$84 million is still quite a large sum, the court noted that the plaintiffs had previously estimated that the total amount of damages they might recover if they prevailed at trial topped \$850 million. The court saw no reason why a potential 90% discount would be justified in this case, especially since Uber stood as much of a chance of losing at trial as the plaintiffs did. Moreover, because the plaintiffs also alleged a claim under California’s unique Private Attorneys General Act (PAGA), it was possible for the value of litigation to rise to over \$1 billion in penalties. For this reason, the court determined that the \$84 million was actually “relatively modest” when compared to the potential verdict value.

### **Proposed Non-Monetary Settlement Was Of “Limited Benefit”**

The court also examined the non-monetary portion of the settlement, which the parties hailed as significant. It would have required Uber to alter some of its business practices in such a way that would have resulted in workers being treated more like employees, while expressly ensuring that workers remained classified as independent contractors. Specifically, the proposed deal assured drivers that they could only be removed from service if Uber could show “sufficient cause,” and provided drivers with an appeals process and arbitration available if they disagreed. Also,

drivers would have been able to elect local leaders to meet with management to dialogue about issues impacting the workforce, and drivers would have the opportunity to collect tips from riders.

The court disagreed with the characterization of these terms as being game-changers. The judge noted that Uber still would have had substantial control over drivers by retaining the ability to temporarily deactivate their status, limiting the freedom they were claiming to provide. The judge also noted that allowing tips might not be of great value because, unlike Lyft, Uber was not proposing to include an in-app tipping feature. Moreover, public statements from Uber continued to discourage riders from tipping, which the judge felt would diminish the purported value of that aspect of the settlement.

Finally, the court noted that the proposed settlement “does nothing to clarify the status of drivers as employees versus independent contractors.”

### **What’s Next For Gig Employers?**

The rejection of this settlement means that this case will now continue in federal court, and both sides have been ordered to present a plan for proceeding to trial. Meanwhile, a concurrent argument will continue before the 9th Circuit Court of Appeals regarding the validity of Uber’s arbitration agreement, which had been struck down as unconscionable by the trial court.

Many court observers believe there is a good chance that the 9th Circuit may very well reverse the lower court ruling and uphold the arbitration agreements as valid; the questions at a June 16 oral argument seemed to suggest that it may be leaning in Uber’s favor. If that happens and the class is reduced in size from approximately 240,000 to 8,000, the value of the lawsuit will be greatly diminished and Uber may actually celebrate the fact that this settlement was scuttled.

Meanwhile, both sides will continue to analyze whether it makes sense to attempt to open up settlement discussions once again in an effort to craft a compromise acceptable to the court, or whether they would rather do battle in court and perhaps one day end up at a jury trial. No matter which path is chosen, gig employers (and others) will continue to focus a keen eye on the matter to determine how it impacts them.

Some questions that could be resolved by this litigation: will the kinds of arbitration agreements typically used by gig employers be upheld by the appeals court? Will the parties attempt to forge another agreement that might further shape the relationship between drivers and the company, thereby helping to clarify the thorny misclassification issue? Will a jury be called upon to render a verdict that may very well play a role in determining the future of thousands of other gig companies?

Fisher Phillips' Gig Economy Practice Group will continue to monitor this litigation for developments. Stay up to date by visiting our [GigEmployer.com](https://www.gigemployer.com) blog on a regular basis.

For more information, visit our website at [www.fisherphillips.com](https://www.fisherphillips.com) or contact your regular Fisher Phillips attorney.

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