

Uber's California Class Action Problem Not as Bad as It Seems

By [James Hickman Follow](#) | 09/02/15 - 10:28 AM EDT
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NEW YORK ([TheStreet](#)) -- A recent court order that has given class-action status to Uber drivers in their struggle to be treated as employees by the ride-sharing service isn't as bad as you might think for the company's prospects.

Edward M. Chen, a U.S. District judge for the Northern District of California, issued an [order](#) "granting in part and denying in part plaintiffs' motion for class certification" in Douglas O'Connor, et al., plaintiffs vs. Uber Technologies Inc., defendant. The order means the plaintiffs side can expand beyond the initial four former drivers to include other qualifying drivers (but not all drivers).

This is a disappointment for Uber, which does not consider its drivers employees and will appeal the decision. If a series of additional steps all go against the company, it could be a significant setback to Uber and the so-called "sharing economy" broadly. But any suggestion that this decision is the initial salvo in the demise of the gig economy's poster child would be extremely premature. Here are the key takeaways.

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-- The class action does not include Uber drivers who chose not to opt out of binding arbitration clauses in their agreements (such clauses have been [upheld by the U.S. Supreme Court](#) and again in this case). As such, the universe of potential parties to the class action is significantly restricted. Uber estimates the potential participants number [less than 15,000](#), notwithstanding the oft-repeated claim that all 160,000 current and former California Uber drivers are potential participants. This is a very important factor beyond California, since Uber's driver networks did not [begin dramatic expansion until 2014](#), in most major cities, a date after which driver agreements included arbitration and non-class action clauses.

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-- The case was filed in California for a reason. State laws are among the [most plaintiff-friendly](#) for pressing employment-related class action lawsuits and it is the state where Uber launched and has the most driver history. Whatever the decision, each state has its own laws regarding the distinction between employees and independent contractors. In New York, for instance, this issue was already adjudicated ([Mazhar Saleem vs. Corporate Transportation Group, LTD., et al](#)) in favor of black car drivers being treated as independent contractors. Moreover, as indicated, former and current Uber drivers without binding arbitration/non-class action clauses in their agreements are significantly fewer in number outside California where Uber's driver networks became significant after the company made binding arbitration/non-class action clauses standard to driver agreements.

-- The decision is important, but has nothing to do with the [complex set of factors](#) to be considered in this case by a jury. This decision does not provide any insight as to how a jury will decide this question.

-- The expense reimbursement claim was rejected, a key and potentially the most costly (to Uber) factor in the complaint. This means the jury will not be contemplating forcing Uber to reimburse drivers for insurance, gasoline, wear-and-tear, tolls, etc.

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-- According to an Uber-commissioned [report](#), as of December 2014, 85% of UberX drivers drove 34 hours or less per week (55% drove 15 hours or less). Many of these part-time employees have other primary jobs, effectively making them independent contractors (almost by definition). Part-time employees get unemployment and workers compensation benefits, but not more costly benefits accorded full-time employees, like health care. This issue has nothing to do with the class action decision, but everything to do with the actual jury trial to come.

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From a policy standpoint, a decision to force workers in the gig economy to be treated as employees might and likely would compel companies to cap many workers' hours at the part-time limit in order to save these costs, reducing the earnings potential and full-time-equivalent jobs provided by these growing industries.

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This article is commentary by an independent contributor. At the time of publication, the author held no positions in the stocks mentioned.