

Third Department Upholds Finding that Uber is an Employer

In what will surely be an important decision for “gig” economy businesses, the Third Department recently upheld two decisions of the Unemployment Insurance Appeal Board finding that Uber is an employer and therefore required to make unemployment insurance contributions.¹

The Third Department held that Uber was an employer because it “exercised control over the results produced or the means used to achieve those results.”² The Court noted that Uber “controls the drivers’ access to their customers, calculates and collects the fares and sets the drivers’ rate of compensation...provides a navigation system, tracks the drivers’ location...controls the vehicle used, [and] precludes certain driver behavior.”³

This decision may have a wide-ranging impact on other gig-based businesses. In general, employees are entitled to a number of protections and benefits that independent contractors are not necessarily entitled to, such as paid sick and safe leave, paid family leave, and leave under the Family and Medical Leave Act. The Third Department provided a roadmap for other New York courts to analyze this issue.

The Third Department’s decision could also foreshadow the outcome in a similar pending case in the Eastern District of New York. In *Islam, et al v. Cuomo, et al*, several New York drivers for various app-based ridesharing companies filed for unemployment in March to avoid catching COVID-19.⁴ The state denied unemployment insurance benefits to many of the drivers due to the lack of wage and earnings data from the companies. The court granted the drivers’ motion for a preliminary injunction, ordering that the State quickly pay unemployment insurance benefits to Uber and Lyft drivers and to clear its backlog within 45 days.

These decisions are part of a trend across the country of Uber and Lyft drivers fighting to be reclassified as traditional employees. For example, California’s Attorney General, along with several city attorneys, filed suit in California over the alleged misclassification of Uber and Lyft drivers as independent contractors. In October 2020, a California appeals court sided with the state and ruled that Uber and Lyft must classify their drivers as employees rather than independent contractors. However, this decision was overturned just a few weeks later and after a nearly \$200 million campaign by both Uber and Lyft, when California voters passed Proposition 22, allowing ridesharing apps to keep their drivers as independent contractors. In July 2020, Massachusetts filed a similar lawsuit against Uber and Lyft again alleging that these companies are misclassifying drivers as independent contractors rather than employees. This case is currently pending in Massachusetts state court.

¹ *Matter of Lowry*, 530395, 2020 WL 7390888 (3d Dept. Dec. 17, 2020).

² *Id.* at *1.

³ *Id.* at *3.

⁴ 20-CV-2328 (LDH), 2020 WL 4336393 (E.D.N.Y. July 28, 2020).

We will continue to monitor these, and other cases addressing this important issue.

If you have any questions about the information presented here, please contact [Mallory Campbell](#), any [attorney](#) in Bond's [Labor and Employment practice](#), or the attorney in the firm with whom you are regularly in contact.



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