



October 13, 2016, NEW YORK— For the first time in New York State, the Department of Labor has determined that two former Uber drivers were employees, not independent contractors as the company claims. The determinations came after **Legal Services NYC's Brooklyn program** filed a federal lawsuit on behalf of the New York Taxi Workers Alliance and two **Uber** drivers, **Jakir Hossain** and **Levon Aleksanian**, complaining that the New York State Department of Labor was refusing to investigate claims for unemployment benefits by Uber drivers. Uber does not contribute to unemployment benefit funds or guarantee a minimum wage for drivers because the company insists that its drivers are independent contractors. Both Uber driver plaintiffs have been determined to be employees of Uber and one was determined to be an employee of both Uber and Lyft.

Press coverage: [New York Times](#), [Gothamist](#), [Wall Street Journal](#), [New York Business Journal](#), [Money Magazine](#), [Quartz](#), [NY Post](#), [Consumerist](#), [TheStreet.com](#), [Business Insider](#), [WNYC](#), [NBC New York](#), [FOX Business](#), [AOL News](#), [TechCrunch](#), [Fortune](#), [amNY](#), [VICE News](#), [NY Daily News](#), [NY Law Journal](#)

(Above: Brooklyn Legal Services Staff Attorney Nicole Salk at a press conference announcing the decision.)

One plaintiff, Jakir Hossain, began to receive unemployment benefits last week after struggling to get by for nearly a year while waiting for his determination. Mr. Hossain was found to be an employee of both Uber and Lyft.

"Now that I have received unemployment benefits I can finally start to make ends meet again," said **Mr. Hossain**. "As the Department of Labor dragged its feet, I was so broke that I had to borrow money to pay my rent and I racked up credit card debt for the first time. After Uber deactivated me for having a 4.3 rating, I was no longer able to send money home to my family in Bangladesh and I couldn't afford basic living expenses. I came to this country with the hope that if I worked hard enough, I could create a better future for myself. But my experience with Uber left me broken hearted about the American dream. Now that I see the strength we have when drivers work together with the support of our union, the New York Taxi Workers Alliance, to fight for our rights, I have reason to hope again."

"This is a significant victory for Uber drivers, and a game changer for all drivers in a race to the bottom due to Uber's economic policies," said **Bhairavi Desai, Executive Director of the New York Taxi Workers Alliance**, which was also a plaintiff in the lawsuit. "Uber is lowering the standards for all drivers across the industry and the outcome of this fight will, in many ways, determine the future of the industry. That's why it's so important to hold Uber accountable. We're calling on the Department of Labor to conduct a full audit of Uber and make a determination consistent with labor law that all drivers are employees. We will keep fighting until we win employee status for all Uber drivers and all of the legal and economic protections for workers that correspond with employee status."

The decision could have a profound impact on the business models of Uber and other app-based car service companies that "terminate" drivers at will and keep them at low pay without any protections to fall back on.

"I started working for Uber in 2014. At first everything seemed great - I had plenty of fares and could make a decent living," said **Mr. Aleksanian**. "But by 2015 I had to consistently work seven days a week to make ends meet. Because I had to work all the time, I couldn't spend time with my daughter who was six years old. Shortly after I lost my job at Uber, I had another child. I applied for unemployment benefits but the New York State Department of Labor told me that all applications from Uber drivers were under executive review. It was only after I went to the New York Taxi Workers Alliance and we filed our lawsuit that I was finally determined to be an employee of Uber. Now I am awaiting a hearing so that I can receive the unemployment benefits I need to support my family."

Jeffrey Shepherd is another former Uber driver who has yet to win his determination of employee status and is still waiting to receive unemployment benefits after working for Uber for nearly a year.

"I was forced out of my job driving for Uber after my car got repossessed because I didn't make enough money driving for Uber to make my leasing payments," said Mr. Shepherd. "At 54 years old, it's humiliating to have to depend on my 76-year-old father for support, but I don't have the money to buy food, pay my bills, or even to pay for gas to drive to a job interview. Uber promised that I could make a good living driving for them. But they took car payments straight out of my paycheck so that sometimes after working seven days a week, I was left with as little as 50 cents in income. After my car was repossessed, I read about the lawsuit that New York Taxi Workers Alliance filed and reached out for help with my case. I'm hopeful that I will receive unemployment benefits and that by sharing my story and working together, other drivers won't end up in my situation."

If Uber is forced to pay into unemployment benefit funds it may have to reexamine its practices of "deactivating" drivers who receive ratings below 4.5 and refusing to guarantee a living wage. Being unable to cover basic living expenses is grounds for filing for unemployment benefits.

"The NYS Department of Labor has consistently found that black car drivers are employees not independent contractors," said **Brooklyn Legal Services Senior Staff Attorney Nicole Salk**, who represented the plaintiffs. "The determination of whether or not a worker is an employee or an independent contractor comes down to control. There is no question that Uber has complete control over the working conditions of their drivers. We are extremely happy that the lawsuit filed on behalf of the two former Uber drivers and the New York Taxi Workers Alliance has resulted in the DOL finding that our clients were employees of Uber. However, the DOL clearly needs to do a comprehensive review of all pending unemployment cases by former Uber drivers so that they can receive the benefits they are rightfully owed and so that Uber pays into the fund as it should have done from the beginning. The onus should not be on individual drivers to prove that they are employees of a company that spends billions to lobby state and federal officials."

James Parrott, Chief Economist for the Fiscal Policy Institute said, "Uber drivers are employees and Uber needs to be held responsible for paying its fair share of unemployment benefits insurance and Federal taxes on employee wages. The taxes that Uber has refused to pay that are required of all employers could be used to fund schools and build roads. Uber's failure to pay into unemployment funds hurts our economy as a whole as small businesses are forced to subsidize Uber's share of revenue and workers are denied the benefits to which they are rightfully entitled. Uber could owe tens of millions of dollars to New York State's unemployment fund."

Christine Owens, Executive Director of the National Employment Law Project, which released a policy brief on the harmful impacts of misclassifying workers as independent contractors, said, "Workers who can least afford it should not be forced to bear the burden of proving case by case that they deserve benefits, while struggling to get by for months or even years without the unemployment benefits they deserve under the law. The Department of Labor needs to audit Uber so that these cases can be settled all at once. Uber's insistence on calling its workers independent contractors strips drivers of essential economic and workplace protections, including paid overtime and a guaranteed minimum wage. Uber exerts control over workers in a manner that shows it is clearly an employer and as such should be held to the same level of accountability."

Although the drivers received their determinations in August and September, the first unemployment payment was made just last week. In the lawsuit the plaintiffs outlined the delays by the Department of Labor. In one email quoted in the federal complaint, a Department of Labor employee wrote, "The information we are being given is these claims (not just yours) are under executive review, which means the Dept of Labor is not making the decision whether or not this employment is covered." The email was, according to *The New York Times*, "hinting at possible intervention by the governor's office."

The New York Taxi Workers Alliance and Brooklyn Legal Services are calling on the New York State Department of Labor to conduct a comprehensive audit of Uber to determine all workers as employees and therefore eligible for unemployment benefits and protected under wage and hour laws.

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