

March 4, 2019, New York, NY – A previous ruling that found that three New York Uber drivers and all similarly situated drivers are considered employees for the purposes of unemployment insurance is now the law of the land in New York State, following a recent withdrawal of an appeal by Uber. Uber is now expected to begin making unemployment contributions for drivers.

Many Uber drivers in New York State who find themselves out of a job will now be entitled to unemployment insurance to make ends meet and support themselves and their families. Now that the decision is final, Uber is expected to begin making unemployment contributions for the three former Uber drivers who were claimants in the case and all similarly situated drivers. If Uber fails to make contributions, the NYS Department of Labor has committed to "conduct an investigation to determine the amounts of contributions that are due as a result of this decision." Uber could be on the hook for millions of dollars in unemployment insurance contributions for its New York City drivers, and possibly for all drivers across New York State. According to the Judge who issued the ruling, Uber is responsible for contributions going all the way back to the first quarter of 2013 for each claimant, and for all drivers with employment conditions similar to the three drivers whose experiences seem to cover the vast majority of drivers in New York City.

"This is a huge victory for Uber drivers in New York State and an amazing precedent for for-hire drivers across the US who are currently navigating the long and drawn out process of applying for unemployment benefits," said **Nicole Salk, an attorney at Legal Services NYC who filed the case.** "Uber drivers who suddenly find themselves out of a job shouldn't have to jump through countless hoops to get the unemployment benefits they are entitled to. We are now waiting on the NYS Department of Labor to make good on their promise to audit Uber to determine how much the company owes the state in unemployment contributions."

Jeffrey Shepherd, one of the three former Uber driver claimants in the case, and a member of the New York Taxi Workers Alliance, said, "Uber's greedy business practices pushed me into poverty and debt, and I am still trying to recover. I was able to collect unemployment benefits after I quit working for Uber because I made too little to cover my basic living expenses. Sometimes I brought home as little as a penny in income after driving for a full week because Uber took car lease payments directly from the app before giving me any of my pay. If I hadn't been able to collect unemployment benefits, I don't know how I would have survived. I hope that no one else will ever have to go through my situation now that Uber finally acknowledged defeat in the case."

The ruling that now stands is a final decision by New York State Unemployment Insurance Appeal Board, a state board that independently decides issues of unemployment insurance benefit eligibility and unemployment insurance contribution liability. In July 2018, the Board held that three former Uber drivers named in a suit for unemployment insurance benefits and all similarly situated drivers who quit because they can't make ends meet, or who are "deactivated" through no fault of their own, are considered employees in New York State for the purposes of unemployment insurance benefits.

In its decision, the Board found that Uber exerted control over drivers and acted as an employer based on the following criteria:

- Uber assigns work by dispatching drivers through the App
- Uber sets the fare rates and collects the fares from passengers; and sets the pay rates for drivers and pays drivers
- Uber maintains a 5-star rating system for drivers and deactivates drivers who fall below 4.5 stars
- Uber monitors drivers' performance and fields complaints
- Uber monitors drivers' acceleration, braking, speed, and routes driven while on the app

The landmark decision is now the official position of New York State government and sets a precedent for all Uber drivers who apply for Unemployment Insurance in the future.

"In its race to go public, Uber has oversaturated our streets, which has only been possible because Uber fires drivers without any consequences," said **Bhairavi Desai, Executive Director of the New York Taxi Workers Alliance.** "Now that Uber has to pay unemployment benefits for its drivers, the company may think twice about over hiring and then "deactivating" drivers for any reason. The cap on new vehicles and, now, unemployment insurance benefits for drivers together will help to stabilize driver incomes and provide some job security – two things gig companies have denied workers. These new companies are learning an old lesson – organized workers can win. Cuomo's post-election Department of Labor will now be put to the test on whether it will follow through on its commitment to investigate Uber. "

Timeline of Case

Uber's recent appeal withdrawal follows months of court maneuvering in an effort to avoid such a ruling. Brooklyn Legal Services, a program of Legal Services NYC, first filed a federal lawsuit in July 2016 on behalf of the New York Taxi Workers Alliance (NYTWA) and former Uber drivers complaining that the New York State Department of Labor was refusing to investigate their claims for unemployment benefits. One former Uber driver applied for unemployment insurance in

September 2015 and had not received a response from the department by June 2016, which was unusual as applicants typically hear back quickly in order to receive emergency financial benefits. When he checked in on his claim, the department told him his claim was "under executive review, which means the [department] is not making the decision whether or not this employment is covered," hinting at possible intervention from the governor's office.

Almost immediately after filing the federal suit, the NYS Department of Labor began processing Uber drivers' claims and found the three former Uber drivers as well as other individuals similarly situated to be employees for the purposes of unemployment benefits. Uber appealed the finding and an Administrative Law Judge held combined hearings for the three drivers and overruled the appeal on June 9, 2017. On June 29, 2017, Uber appealed the decision again to the Unemployment Insurance Appeal Board, a state board independent of the NYS Department of Labor that decides issues of unemployment insurance benefit eligibility and unemployment insurance contribution liability.

The Board held hearings for over a year with the NYS Department of Labor arguing on the side of the drivers. It is extremely unusual for the Board to hold supplemental hearings, and they did so largely at Uber's behest. However, after 11 months and several additional hearings, on May 31, 2018, Uber made an 11th hour attempt to withdraw their appeal when it became clear that the company was going to lose. The Unemployment Insurance Appeal Board rejected Uber's attempt to withdraw and issued a final ruling in July 2018 upholding that the three Uber drivers, and any other individuals similarly situated, to be employees for the purposes of unemployment benefits. Uber appealed the Board's ruling to the New York State Supreme Court's Appellate Division, and on the last day the company had to submit the content of its appeal, instead withdrew its appeal.

###

About the New York Taxi Workers Alliance

Founded in 1998, the New York Taxi Workers Alliance (NYTWA) is the 21,000-member strong union of NYC taxicab drivers, representing yellow cab drivers, green car, and black car drivers, including drivers for Uber and Lyft. We fight for justice, rights, respect and dignity for the over 50,000 licensed men and women who often labor 12 hour shifts with little pay and few protections in the city's mobile sweatshop. Our members come from every community, garage, and neighborhood. To find out more visit NYTWA.org, follow us on twitter.com/nytwa, and like us on facebook.com/nytwa.

About Brooklyn Legal Services

Brooklyn Legal Services, a program of Legal Services NYC, fights poverty and seeks racial, social, and economic justice for low-income New Yorkers. For 50 years, Brooklyn Legal Services has challenged systemic injustice and helped clients meet basic needs for housing, access to high-quality education, health care, family stability, and income and economic security. Legal Services NYC is the largest civil legal services provider in the country, with neighborhood-based offices across all five boroughs helping more than 110,000 New Yorkers annually.