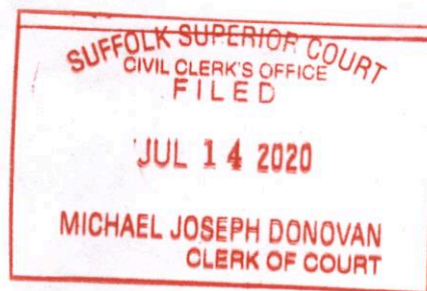


COMMONWEALTH OF MASSACHUSETTS**SUFFOLK, ss.****SUPERIOR COURT
C.A. NO.**

20-1519 B

**MAURA HEALEY, in her official capacity as
ATTORNEY GENERAL for the
COMMONWEALTH OF MASSACHUSETTS,****Plaintiff,****v.****UBER TECHNOLOGIES, INC. and LYFT,
INC.,****Defendants.****COMPLAINT FOR DECLARATORY JUDGMENT****INTRODUCTION**

1. Defendants, Uber Technologies, Inc. (Uber) and Lyft, Inc. (Lyft), are transportation companies that provide rides to their customers that are pre-arranged through the companies' mobile phone applications.
2. To provide these rides to their customers the companies contract with individuals who work as their drivers.
3. Under Massachusetts Wage and Hour Laws, these drivers are employees of Uber and Lyft.
4. Because the bargaining power between the companies and their drivers is inherently unequal, Uber and Lyft impose non-negotiated contract terms and conditions.

5. In the companies' service agreements with drivers Uber and Lyft misclassify their drivers as independent contractors, rather than employees, in order to realize significant cost-savings.

6. These service agreements also include forced arbitration provisions to prevent drivers from pursuing otherwise available legal remedies.

7. Uber and Lyft have continued to use their independent contractor business models even as their drivers in Massachusetts and throughout the country have continued to mount protests over low pay and the lack of labor protections, as well as other exploitative practices.

8. As a result of the companies' misclassification of their drivers as independent contractors Uber and Lyft deprive drivers of many basic rights and benefits that employees in Massachusetts are entitled to receive – including the right to full and timely payment of earned wages, minimum wage and overtime pay, earned sick leave, and anti-retaliation protections.

PARTIES

9. Plaintiff Maura Healey, in her capacity as Attorney General of Massachusetts, is charged with enforcement of the various labor and employment laws in the Commonwealth. *See, e.g.*, G.L. c. 149, §§ 27C, 150. These laws include the Independent Contractor Misclassification Statute, G.L. c. 149, § 148B, which creates a presumption of employment status for “an individual performing any service” for purposes of the Wage and Hour Laws, G.L. chs. 149 and 151.

10. The Attorney General has a substantial interest in protecting workers from exploitative labor and employment practices and fostering a level playing field for those businesses who abide by the law.

11. To that end, the Attorney General is granted broad statutory authority to investigate potential violations of state laws that regulate wages, hours, and working conditions and undertake enforcement through both criminal and civil proceedings. *See* G.L. c. 149, §§ 5, 27C, 148B; G.L. c. 151, §§ 3, 15.

12. As the official responsible for enforcement of the Wage and Hour Laws, the Attorney General's reasonable interpretations of those laws are entitled to substantial deference. *Camara v. Attorney Gen.*, 458 Mass. 756, 759 (2011).

13. Defendant Uber Technologies, Inc. (Uber) is based in San Francisco, California and is organized under the laws of the State of Delaware. Uber does business throughout the United States, including in Massachusetts, and operates from a principal place of business at 1455 Market Street, in San Francisco, California. Uber is registered to do business in Massachusetts as a foreign corporation and maintains a registered agent for service of process with the CT Corporation System, 155 Federal Street, Suite 700, in Boston, Massachusetts. Prior to the COVID-19 Pandemic, Uber operated and maintained "Greenlight Hubs" at various locations throughout Massachusetts – including in Boston, Dorchester, Saugus, Chelmsford, West Springfield, and Brockton – to provide in-person support for Uber drivers.

14. Defendant Lyft, Inc. ("Lyft") is based in San Francisco, California and is organized under the laws of the State of Delaware. Lyft does business throughout the United States, including in Massachusetts, and operates from a principal place of business at 185 Berry Street, Suite 5000, in San Francisco, California. Lyft is registered to do business in Massachusetts as a foreign corporation and maintains a registered agent for service of process with the CT Corporation System, 155 Federal Street, Suite 700, in Boston, Massachusetts. Lyft

operates and maintains “Lyft Hub Service Locations” in Massachusetts – including Medford and Weymouth – that provide in-person support for Lyft drivers.

15. Uber provides its customers pre-arranged transportation services in Massachusetts, and elsewhere, via an on-demand mobile phone application (“app”) and advertises to its customers in Massachusetts on various media. Through its subsidiary, Rasier, LLC, it is a “transportation network company” (TNC) for purposes of the Transportation Network Companies Act, G.L. c. 159A½, § 1.

16. Lyft provides its customers pre-arranged transportation services in Massachusetts, and elsewhere, via an on-demand mobile phone app, advertises its services to its customers in Massachusetts on various media, and is a TNC for purposes of the Transportation Network Companies Act, G.L. c. 159A½, § 1.

17. This Court has personal jurisdiction over Defendants under G.L. c. 223A, § 3 (a) - (d), because, as set forth in this Complaint, Defendants transact business, contract to supply services, and cause injury in Massachusetts. This action arises out of and relates to Defendants’ business conducted in the Commonwealth and its effects in Massachusetts.

FACTS

STATUTORY FRAMEWORK OF THE WAGE AND HOUR LAWS

Independent Contractor Misclassification Statute, G.L. c. 149, § 148B

18. For purposes of the Wage and Hour Laws, G.L. chs. 149 and 151, the Independent Contractor Misclassification Statute provides that “an individual performing any service . . . shall be considered an employee,” rather than an independent contractor, unless:

- a. the individual is free from direction and control in connection with the performance of the service, both under his contract for the performance of the service and in fact;

- b. the service is performed outside the usual course of the business of the employer; and,
- c. the individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.

G.L. c. 149, § 148B(a).

19. The statute thus creates a presumption of employment status that a putative employer may overcome only by satisfying its burden of proving each prong of the three-part test. *Somers v. Converged Access, Inc.*, 454 Mass. 582, 589 (2009).

20. Under G.L. c. 149, § 148B, Uber and Lyft drivers are employees. Both companies have, however, misclassified their drivers as independent contractors in violation of the statutory employment status test. Accordingly, the Attorney General brings this action to obtain a declaration that Defendants misclassify their drivers and, accordingly, to require Defendants to reclassify their drivers as employees and afford drivers the rights and protections of the Wage and Hour Laws.

Liability under the Massachusetts Wage and Hour Laws

21. In an enforcement action brought by the Attorney General under Section 148B(d), an employer violates the Misclassification Statute upon the occurrence of two acts:

- 1) the employer misclassifies an individual as an independent contractor in violation of the three-part test; and
- 2) as a result of that misclassification, the employer violates one or more of the enumerated employment-related offenses.

Some of the enumerated employment-related offenses include violations of the Wage Act, Minimum Wage and Overtime Laws, Earned Sick Time Law, and Anti-Retaliation Laws. *Id.*

22. The Commonwealth's wage laws impose strict liability. Therefore, an employer's error, even if made in good faith, is no defense.

**UBER AND LYFT DRIVERS ARE EMPLOYEES,
NOT INDEPENDENT CONTRACTORS**

23. Uber and Lyft (collectively, "the companies") provide transportation services to their customers, pre-arranged through the companies' dispatch apps.

24. The companies set the fares that their customers pay the companies for rides booked through their apps and collect the fares from the passengers. The companies, in turn, determine and remit the compensation that they calculate is due to the drivers.

25. Each company is a regulated "transportation network company" under the Transportation Network Companies Act, defined as "a corporation... that uses a digital network to connect riders to drivers to pre-arrange and provide transportation." G.L. c. 159A½, § 1. Under the Act, Uber, Lyft and other transportation network companies (TNCs) must obtain a permit from the Department of Public Utilities to be authorized to provide such transportation services in the Commonwealth. *Id.*

26. Uber describes itself as a transportation company. For example, on its web site, Uber states that it is a "company that moves people," available at <https://www.uber.com/us/en/coronavirus/> (as of July 9, 2020), and describes its drivers as "the people who power Uber," available at <https://www.uber.com/blog/massachusetts/driver-announcements/page/9> (as of July 9, 2020).

27. Lyft similarly describes itself as a transportation company. For example, on its web site Lyft describes itself as "The World's Best Transportation," available at

<https://investor.lyft.com> (as of July 9, 2020) and asks: “Ready to ride? Get a fare estimate,” available at <https://www.lyft.com/rider> (as of July 9, 2020).

28. The companies’ drivers provide pre-arranged transportation to Uber and Lyft customers using the drivers’ own vehicles.

29. Both Uber and Lyft have engaged thousands of drivers in Massachusetts to provide transportation for the companies’ customers.

30. Although most drivers provide such services on a part-time basis, many are full-time drivers and some rely on Uber and/or Lyft as their primary means of financial support.

31. Uber and Lyft require that their drivers enter into standardized service agreements that set out the companies’ non-negotiated terms and conditions. These service agreements allow Uber and Lyft to modify the terms and conditions at any time, and the companies can terminate drivers who do not accept such modifications.

32. Under the agreements Uber and Lyft can suspend, terminate or otherwise penalize drivers who do not meet company standards, as determined in the companies’ sole discretion.

33. Through the service agreements, including addenda to the agreements and other incorporated materials, Uber and Lyft unilaterally set the compensation they pay drivers for their services and make changes to drivers’ pay in the companies’ sole discretion.

34. Uber and Lyft assert that their drivers may work as many or as few hours as they wish, set their own schedules, and choose to accept or decline to take particular fares. But, in fact, to meet customer demand and maximize overall fare volume, Uber and Lyft use various financial inducements, as well as other techniques, to influence and incentivize drivers in selecting the duration, time of day, and location of their shifts in conformity with the companies’ desired outcomes.

35. Uber and Lyft drivers' compensation structure includes a base rate per mile in combination with other potential additional earnings determined from a number of variables, including the duration of individual rides, the length of overall shifts, price surge increases in effect during times of peak demand, as well as subjective customer performance ratings; the premiums paid for these additional variables are based on complicated and confusing formulas, subject to frequent changes and without advance notice.

36. Uber and Lyft do not inform their drivers of the actual compensation they can expect to receive for each ride prior to the drivers accepting the ride.

37. To create a uniform rider experience, and thereby enhance the companies' brand recognition and reputation, Uber and Lyft also impose various driver performance standards through financial disincentives, and other means, that discourage drivers from deviating from the companies' desired methods of service.

38. Specifically, the companies may penalize, suspend or terminate drivers who do not accept enough rides, cancel too many rides, do not maintain adequate subjective customer satisfaction ratings, or engage in other conduct that Defendants, in their sole discretion, determine as grounds for suspension or termination.

39. Uber and Lyft also closely monitor their drivers' performance. The companies' dispatch apps assign rides to their drivers through metrics that control which drivers receive certain ride requests and when.

40. The companies also track their drivers' activities through the apps. By participating on the app, drivers notify the companies about each driver's trip status at every key step of the on-demand ride: (1) acceptance of the ride request, (2) arrival at the pick-up location of the passenger, (3) start of the trip, and (4) end of the trip.

41. The companies do not inform riders of the compensation that will be paid from their fares to drivers, and the companies' apps hide key information from riders about their drivers' experience, limiting drivers' ability to differentiate themselves and increase their earnings in the way a true independent contractor or entrepreneur typically would.

42. As described in this Complaint, Uber and Lyft drivers are not "free from direction and control in connection with the performance of the[ir] service." G.L. c. 149, § 148B(a)(1). Defendants impose various performance standards on their drivers. Drivers who, from the companies' perspective, do not meet those standards risk suspension or termination if they do not accept enough rides, cancel too many rides, do not maintain adequate subjective customer satisfaction ratings, or engage in other conduct that Defendants determine as grounds for suspension or termination. Defendants also direct and control their drivers through various forms of financial incentives, as well as other means, to influence and incentivize drivers in their selection of the duration, time of day, and location of their shifts. And the companies closely monitor and track every aspect of the drivers' performance through their app systems.

43. For purposes of G.L. c. 149, § 148B(a)(2), the services that Uber and Lyft drivers perform are not "outside the usual course" of the companies' transportation businesses. Uber and Lyft prearrange and provide transportation for their customers. Their drivers' services are a regular and continuing part of Defendants' businesses, necessary to provide transportation for Defendants' customers. Indeed, without drivers to provide rides for their customers, Uber and Lyft would cease to exist. For example, Uber recognizes this reality on its web site where it describes its drivers as "the people who power Uber," available at <https://www.uber.com/blog/massachusetts/driver-announcements/page/9> (as of July 9, 2020).

44. Moreover, because both Uber and Lyft retain portions of the passenger fees generated through their drivers' efforts, Uber and Lyft directly rely on the success of their drivers' endeavors. This pay structure is in contrast to traditional independent taxi drivers who pay flat fees, often set by regulation, to lease their medallions – such that cab companies do not depend on taxi drivers' success or volume of fares. *Sebago v. Boston Cab Dispatch, Inc.*, 471 Mass. 321, 333-34 (2015). Thus, Defendants' financial dependence on their drivers demonstrates that their drivers' services are not outside the usual course of the businesses of Uber and Lyft.

45. Because Uber and Lyft directly benefit from their drivers' fare volume under the companies' required fee-splitting arrangements – whereby the companies retain portions of customer fares – Defendants' drivers are more akin to limousine drivers who use their own vehicles to provide pre-arranged rides through the companies that employ them and share a percentage of the customer's fare with the drivers, rather than bona fide independent entrepreneurs with the ability to grow their businesses based on their individual abilities by effectively marketing and offering their services to the general public. Accordingly, Uber and Lyft drivers are not “customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed” for purposes of G.L. c. 149, § 148B(a)(3).

46. The facts alleged in this Complaint, and others, demonstrate that Uber and Lyft drivers are employees, for purposes of the Massachusetts Wage and Hour Laws, under G.L. c. 149, § 148B, and that Defendants have misclassified their drivers as independent contractors.

UBER AND LYFT DRIVERS ARE DENIED BASIC PROTECTIONS UNDER THE WAGE AND HOURS LAWS

The Wage Act, G.L. c. 149, §§ 148-150

47. The Wage Act creates a “personal” and “independent statutory right” to full and timely payment of all earned wages. G.L. c. 149, §§ 148-150; *Newton v. Comm’r of the Dep’t of Youth Serv.*, 62 Mass. App. Ct. 343, 346-47 (2004).

48. The Wage Act also prohibits employers from requiring their employees to incur necessary business-related expenses, whether directly through wage deductions or indirectly through de facto wage deductions.

49. Uber and Lyft do not reimburse drivers for necessary business expenses they incur arising from the transportation services they provide, including, but not limited to, costs for maintaining their vehicles, fuel, and auto insurance, as well as phone and data charges associated with operating the companies’ apps.

50. As employees, Uber and Lyft drivers are entitled to full and timely payment of all earned wages and to reimbursement of any ordinary business expenses that are primarily for the employer’s benefit, whether paid for through wage deductions or otherwise incurred by the drivers on their employers’ behalf.

The Massachusetts Minimum Wage and Overtime Laws

51. For purposes of the wage laws – including the Minimum Wage and Overtime Laws – time that an employee spends on duty, either at a “prescribed work site or at any other location” qualifies as compensable working time. *See* 454 C.M.R. § 27.02.

52. The Massachusetts Minimum Wage Law, G.L. c. 151, § 1, requires that employees must receive no less than the applicable minimum hourly wage rate in effect – currently \$12.75 (effective Jan. 1, 2020).

53. Massachusetts law expressly prohibits an employer from reducing an employee's pay below minimum wage, regardless of whether the employee agreed to such an arrangement. G.L. c. 151, § 1.

54. The Massachusetts Overtime Law, G.L. c. 151 §§ 1A and 2, requires that an employee, unless otherwise exempt, must be paid no less than time and one half an employee's regular hourly rate of pay for all hours worked over forty in a week – and an employee's regular hourly rate cannot be less than Minimum Wage. Additionally, G.L. c. 151, § 1B expressly prohibits parties from agreeing between themselves that an employee may work “for less than such overtime rate of compensation.”

55. Uber and Lyft do not provide any compensation to drivers for their time spent while waiting or driving between fares (known as “cruising”).

56. As a result, taking into account the business expenses drivers incur and the lack of compensation for time between fares, many drivers receive less than minimum wage for their working time and, similarly, do not receive overtime pay for their excess hours, in violation of the Wage Act, G.L. c. 149, §§ 148-150, the Minimum Wage Law, G.L. c. 151, § 1, and the Overtime Law, G.L. c. 151, §§ 1A-2.

The Massachusetts Earned Sick Time Law, G.L. c. 149, § 148C

57. In 2014, Massachusetts voters overwhelmingly approved by initiative a measure that mandates sick pay for workers. G.L. c. 149, § 148C (added by St. 2014, c. 505, § 1 (eff. July 1, 2015)).

58. Under the Massachusetts Earned Sick Time Law (ESTL), employers with 11 or more workers must provide paid leave to employees during absences from work in order to allow employees to care for themselves and their family members, without fear of reprisal. Section 148C(b), (c), (d)(4), (h), (i).

59. Among other things, employees can use earned sick leave to address a condition that requires home care, professional medical diagnosis or care, and preventative medical care for themselves as well as for their family members. Section 148C(c). *See also* Massachusetts Attorney General’s Earned Sick Time in Massachusetts, FAQs (Sept. 21, 2018) at p. 8, <https://www.mass.gov/doc/earned-sick-time-faqs/download>. The ESTL applies whether a worker is employed on a full time, part-time, seasonal, or temporary basis. 940 C.M.R. § 33.02. And when an employee simultaneously works for more than one employer, the law requires that each employer must provide sick leave benefits. Earned Sick Time FAQs at p. 5. Employees “must be paid what they would have earned if they had worked instead of using earned sick time.” *Id.* at p. 9. *See also* Section 148C(a).

60. Workers who meet the statutory employment status test but are misclassified as independent contractors by their employer are “improperly denied access to earned sick time and other benefits.” Attorney General’s Earned Sick Time in Massachusetts, FAQs (Sept. 21, 2018) at p. 3, <https://www.mass.gov/doc/earned-sick-time-faqs/download>.

61. The risk of harm to Uber and Lyft drivers and to the general public from lack of adequate paid sick leave is readily apparent. The Centers for Disease Control and Prevention (CDC) recommends that people stay home when they are sick to prevent the spread of COVID-19. CDC, What To Do if You Are Sick, <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html>. But workers who are not entitled to paid sick leave often cannot

afford to stay home. *See, e.g.*, Elise Gold and Jessica Schieder, Economic Policy Institute, Work Sick or Lose Pay? (June 28, 2017), <https://www.epi.org/files/pdf/130245.pdf>. Indeed, the medical community has long understood that workers without paid sick leave are less likely to take time off when they are sick. *See, e.g.*, National Institutes of Health, Workers Without Paid Sick Leave Less Likely To Take Time Off For Illness Or Injury Compared To Those With Paid Sick Leave (Mar. 2016), <https://www.ncbi.nlm.nih.gov/pubmed/26953308>.

62. Until the outbreak of the current COVID-19 pandemic, neither Uber nor Lyft offered drivers any form of paid leave benefits. How the companies determine the amount of paid leave that they currently offer to drivers is not publicly available but it appears that access is limited only to drivers actually diagnosed with COVID-19 or put under quarantine by a public health agency. *See* “An update on COVID-19 financial assistance,” April 10/US, available at <https://www.uber.com/blog/update-covid-19-financial/> (last visited July 9, 2020). Moreover, any proffered leave is only temporary. Thus, Uber and Lyft fail to comply with the requirements of the ESTL, G.L. c. 149, § 148C.

The Massachusetts Anti-Retaliation Statutes

63. The Massachusetts Anti-Retaliation Statutes, G.L. c. 149, § 148A; G.L. c. 151, § 19(1), prohibit employers from taking any retaliatory action against those who assert their rights under the wage laws, in order to ensure that the requirements of the laws are met. *See Parker v. EnerNOC, Inc.*, 484 Mass. 128, 133 (2020).

64. By misclassifying their drivers as independent contractors, Uber and Lyft wrongfully seek to deprive drivers of their statutory protections against retaliation on occasions when drivers believe their accounts were deactivated, or they suffered other adverse actions, for

exercising their rights under the Massachusetts Wage and Hour Laws, in violation of G.L. c. 149, § 148A and G.L. c. 151, § 19(1).

CLAIM FOR DECLARATORY JUDGMENT

65. The Attorney General incorporates by reference paragraphs 1-64.

66. There is an actual case and controversy, within the meaning of G.L. c. 231A, arising from a dispute between the Attorney General and Defendants as to the classification of Uber and Lyft drivers under G.L. c. 149, § 148B, for purposes of the Commonwealth's Wage and Hour Laws. Although Uber and Lyft drivers are employees under G.L. c. 149, § 148B, the companies have misclassified the drivers as independent contractors. This Court is authorized under G.L. c. 231A, §§ 1, 2 and 5, to enter a binding declaration that Uber and Lyft drivers are employees under G.L. c. 149, § 148B entitled to the benefits and protections of the Wage and Hour Laws.

COUNT I - DECLARATORY RELIEF

WHEREFORE, the Attorney General seeks a declaration that:

A. Defendants' drivers are employees under G.L. c. 149, § 148B for purposes of the Wage and Hour Laws, chapters 149 and 151;

B. The Wage Act, G.L. c. 151, §§ 148, 150, prohibits Uber and Lyft from causing drivers to incur work-related business expenses, such as vehicle maintenance costs, fuel and auto insurance, as de facto wage deductions;

C. The Minimum Wage Law, G.L. c. 151, § 1, requires that Uber and Lyft pay their drivers no less than the applicable minimum wage for all compensable working time;

D. The Overtime Law, G.L. c. 151, §§ 1A, 1B, requires that Uber and Lyft pay their drivers no less than time and one half their regular rates of pay (at no less than Minimum Wage) for all compensable working time in excess of 40 hours in a week;

E. The Earned Sick Time Law, G.L. c. 149 § 148C, requires that Uber and Lyft provide their drivers with up to forty hours of paid sick leave benefits, at no less than minimum wage, accrued at a rate of at least one hour for every thirty hours worked, for the purposes outlined within the statute and the interpretive regulations promulgated by the Attorney General; and

F. The Anti-Retaliation Statutes, G.L. c. 149, § 148A and G.L. c. 151, § 19(1), prohibit Uber and Lyft from taking adverse employment action against drivers for exercising their rights under the Wage and Hour Laws, including but not limited to, termination, suspension, or deactivation from the applicable app.

COUNT II – INJUNCTIVE RELIEF

The Attorney General further seeks:

G. An injunction that requires Defendants to classify their Massachusetts drivers as employees for purposes of the Massachusetts Wage and Hour Laws and prohibits Defendants from denying their drivers any of the protections afforded by chapters 149 and 151, as described in A-F, above.

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