

Uber drivers sue company for pushing California anti-employment initiative

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Body

A group of gig workers Thursday sued Uber for up to \$260 million in penalties alleging the company has violated employment rights with aggressive in-app messaging urging workers to support the company's position on a November ballot measure.

Uber has been asking drivers in its app to support Proposition **22**, which would supersede a state law that requires gig companies to make its drivers employees. Currently, Uber and other apps treat drivers as independent contractors, which means they are not required to adhere to minimum-wage or health-care requirements. Uber, DoorDash, Lyft and other companies have spent nearly \$200 million on the initiative, plastering the airwaves with TV ads and blasting Californians' cellphones with text messages warning about potentially drastic consequences if the measure fails to pass.

The Uber drivers filed suit in San Francisco Superior Court a little less than two weeks before the election, saying Uber has violated workers' rights with the "constant barrage" of pro-**Prop 22** messages Uber drivers receive on the job.

The suit says Uber has engaged in illegal political coercion by issuing repeated warnings to drivers in the app about the consequences if **Prop 22** fails. One screenshot posted to social media shows that drivers are prompted with a message reading "**Prop 22** is progress," touting the health-care and earnings changes it would usher in. Drivers have to click through the prompt, answering either "Yes On **Prop 22**" or "OK" to proceed.

According to the lawsuit, Uber informed workers that 72 per cent of drivers and delivery people said they plan to vote yes on **Prop 22**. The figure, the lawsuit alleges, "is false and misleading because it suggest[s] that 72 per cent is an accurate, unbiased figure, when in fact it is the consequence of the many pressures to conform to Uber's preferred position." The lawsuit also says Uber could monitor the survey answers and use them to favor drivers who supported **Prop 22**.

Uber peppered drivers with misleading facts about **Prop 22**, the lawsuit says. For instance, it told drivers that if **Prop 22** passes, drivers will earn 120 per cent of minimum wage. But that figure hinges on "engaged time," meaning time giving rides or en route, rather than time logged on an app when waiting for a fare. The current law would actually mean higher wages for drivers, the lawsuit says, because it requires Uber to pay drivers even when they're waiting for a ride.

"Uber's threats and constant barrage of **Prop 22** propaganda on an app the drivers must use to do their work have one purpose: to coerce the drivers to support Uber's political battle to strip them of workplace protections," David Lowe, a partner with the firm representing the workers, Rudy, Exelrod, Zieff & Lowe, said in a statement.

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The suit seeks an injunction that would prevent Uber from continuing to show drivers the **Prop 22** messages. With so little time before the election and many mail-in ballots already cast, Lowe said in an interview that his firm would attempt to find ways to speed up the process and gain the injunction as quickly as possible.

Uber did not immediately respond to a request for comment.

Uber argues that drivers prize the flexibility that comes with being independent and that an employment requirement would force it to adopt established hours, potentially increasing wait times and fares.

It has said it may also force the company to exit some markets and result in the company firing tens of thousands of gig workers. It has pointed to two surveys, one unscientific and another paid for by the company -with more rigid methodology -to support its argument that drivers favor being independent contractors.

The law under contention is California's Assembly Bill 5, passed last year and aimed at establishing some classes of gig workers as employees. Uber, Lyft, Door-Dash and other gig companies fought the measure, as well as its implementation this year.

In May, California's Democratic Attorney General Xavier Becerra, along with the city attorneys of San Francisco, San Diego and Los Angeles, sued Uber and Lyft, saying the companies were misclassifying hundreds of thousands of workers after the law took effect in January.

By August, a San Francisco judge ruled that Uber and Lyft had to make their drivers full employees, but the ruling was stayed while the companies appealed. The case is now before a California Court of Appeal, and a ruling may not come until after the election.

California has some of the strongest labor laws in the country, and employers are prohibited from influencing employees' political activities.

"Despite California's longstanding prohibitions against employer interference with the political rights and freedoms of their employees, Uber has taken advantage of its raw economic power and its exclusive control over communications through its driver-scheduling app by wrongfully pressuring its drivers to actively support Proposition **22**," the lawsuit alleges.

The lawsuit was filed under the California Private Attorneys General Act, a law that allows employees to sue on behalf of the state and collect a portion of any fines that result from the lawsuit. If Uber were found to have violated California labor law, it could be forced to pay up to \$200 per Uber driver for every pay period since Uber's **Prop 22** campaign began, for a maximum penalty of over \$260 million, Lowe said.

The San-Francisco-based nonprofit Legal Aid at Work is also representing the drivers. !@COPYRIGHT=© 2020 The Daily Gleaner (Fredericton)

Graphic

Photo: Patrick T. Fallon, Bloomberg; Uber signage is displayed at the centralized pickup area at Los Angeles International Airport on Oct. 29, 2019.;

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