

The Law Office of Joseph Gruchawka

May 15, 2020

VIA CERTIFIED MAIL:

Lyft, Inc.
548 Market Street
#68514
San Francisco, CA 94104

PAGA Notice

[Cal Lab Code § 2699.3(c)(1)(A)]

To Whom It May Concern:

Claimant Jose Luis Diaz Espinoza (“Espinoza”) alleges that Lyft, Inc. (“Lyft”) violated California Labor Code section 226.8(a)(1) by willfully misclassifying Espinoza as an independent contractor, violated California Labor Code section 226.8(a)(2) by unlawfully charging Espinoza fees, violated California Labor Code section 246 by failing to provide Espinoza with paid sick days, and violated California Labor Code section 221 by making unlawful deductions.

I. Violation of California Labor Code section 226.8(a)(1):

Espinoza has been a driver for Lyft since October 2018. Lyft is a transportation company in the business of selling rides to customers, and Espinoza is one of its drivers who provides the rides Lyft sells.

Lyft has engaged in a pattern or practice of willfully misclassifying hundreds of thousands of their drivers as independent contractors since 2012.

In April 2018, the California Supreme Court in *Dynamex Operations W. v. Superior Court* (2018) 4 Cal. 5th 903 adopted the “ABC” test to determine whether a worker is an employee or an independent contractor. As of January 1, 2020, A.B. 5 explicitly incorporated the ABC test into the California Labor Code. (See California Labor Code section 2750.3)

Under the ABC test, for a worker to be properly classified as an independent contractor rather than an employee, the hiring party (in this case Lyft), has the burden of establishing that all of the following three conditions are satisfied:

- (A) The worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact;
 - (B) The worker performs work that is outside the usual course of the hiring entity’s business;
- and

- (C) The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.

The relationship between Lyft and Espinoza does not meet any element of the ABC test:

A. Espinoza is subject to the control and direction of Lyft

Lyft's app, in combination with its policies, functions like an algorithmic manager that effectively supervises Espinoza.

Lyft determines which drivers are eligible to provide ride-hailing services on its app, and can change its driver standards in its discretion.

Lyft dictates the type of car Espinoza may use on its app, as well as the standards his car must meet. Lyft can change its vehicle standards in its discretion.

Lyft sets the fares that passengers pay for rides received through its app, and Lyft, not Espinoza, collects fare payments directly from passengers.

Lyft monitors Espinoza's work hours, and logs him off its app for six hours if he reaches a 12-hour driving limit.

Lyft does not permit Espinoza to choose his own routes. For example, if a passenger complains to Lyft about a route Espinoza took, Lyft can adjust the fare if it determines Espinoza took an inefficient route. (See, e.g., the August 26, 2019 Lyft Driver Addendum: "Lyft reserves the right to adjust or withhold all or a portion of a Driver Fare or other payment owed to you...(ii) in order to resolve a Rider complaint (e.g., you took an inefficient route...)")

Lyft's app only allows Espinoza approximately 15 seconds to accept or reject a trip request. If Espinoza rejects too many trip request (or fails to accept too many trip requests), Lyft can discipline Espinoza, such as by logging him out from the app.

When Espinoza is available to provide an on-demand ride, Lyft only shows and matches Espinoza with one passenger at a time, regardless of the number of nearby passengers. Espinoza cannot freely negotiate over the terms of the on-demand ride.

Lyft uses information from its passenger ratings to make decisions about disciplining or terminating Espinoza. If Espinoza's rating falls below a certain threshold set by Lyft, Lyft may suspend or terminate Espinoza.

B. Espinoza performs work within Lyft's usual course of business

Espinoza performs work that is within the usual course of Lyft's business: providing on-demand rides. Lyft is a transportation company that sells on-demand rides to its customers (i.e. passengers), who book and pay for such rides through Lyft's app.

Lyft publicly holds itself out as a transportation company in the business of selling on-demand rides. For instance, Lyft has trademarked the slogan, "Your Friend with a Car." Lyft advertises: "Get a ride whenever you need one"; "A ride in minutes"; and "Our drivers are always nearby so you can get picked up, on demand, in minutes."

Lyft bills its passengers directly for the entire amount of the on-demand ride, and Lyft's passengers pay the fare for the service to Lyft, not to Espinoza.

Lyft only generates income for its ride-hailing business if its drivers transport and provide rides to its passengers. Without driver employees such as Espinoza to provide Lyft's service, the on-demand ride, Lyft's ride hailing business would not exist.

C. Espinoza is not engaged in an independently established business

Lyft prohibits Espinoza from soliciting passenger information, and limits his ability to market himself independently for repeat rides outside of Lyft's app.

Lyft limits Espinoza's ability to freely decline and cancel rides that he thinks will be unprofitable.

Lyft limits Espinoza's ability to share his account with other drivers, thus curtailing his ability to individually expand his business offerings.

It is clear that Espinoza is and has been since October 2018 Lyft's employee, along with all of Lyft's other drivers. It is clear that Lyft made a calculated business decision to willfully misclassify Espinoza, and all its other drivers as independent contractors.

II. Violation of California Labor Code section 226.8(a)(2):

California Labor Code section 226.8(a)(2) states that:

"It is unlawful for any person or employer to engage in any of the following activities...Charging an individual who has been willfully misclassified as an independent contractor a fee, or making any deductions from compensation, for any purpose...where any of the acts described in this paragraph would have violated the law if the individual had not been misclassified."

The "Lyft Driver Addendum" which constitutes part of the contract between Lyft and Espinoza reads in part:

“Lyft Fees. ...you agree to pay Lyft (and permit Lyft to retain) a service fee (“Service Fee”) and platform fee (“Platform Fee”) based on each ride you provide...For your convenience, Lyft may collect the Service Fee and applicable event fees from Riders on your behalf to offset your payment of such fees to Lyft.”

A 2019 summary provided to Espinoza by Lyft explains:

“Lyft platform fees... We use platform fees to help maintain the Lyft business...

Service fees...Service fees are added to every ride to support some of Lyft’s operational costs, like insurance and background checks.”

This same 2019 summary provided to Espinoza by Lyft lists under “Expenses” \$6,318.34 in “Lyft platform fees” and \$3,904.00 in “Service fees.”

As stated in *Davis v. Farmers Ins. Exchange* (2016) 245 Cal. App. 4th 1302, 1325:

“*Aguilar v. Zep, supra*, 2014 U.S. Dist. Lexis 120315 at p. *49 [“Even if a contract exists ... , an employer cannot shift the cost of doing business to an employee [Where] routine business expenses that shift the cost of doing business to the employee [are deducted from the employees’ commission-based compensation,] ... [t]he fact that the [employees] consented to the practice is irrelevant.”].)

And at 1336:

“...under the California law, an employer may not ‘pass through’ the normal costs of operating a business to the employee he hires. Debiting an employee's earned wages to cover a normal operating expense of the employer is not allowed in California.” (Dept. of Industrial Relations, DLSE Opn. Letter No. 2000.08.01 (Aug. 1, 2000) p. 4.)”

Here, Lyft has unlawfully shifted the cost of doing business to Espinoza and passed through the normal costs of operating its business (“Lyft’s operational costs) to Espinoza. This constitutes a violation of California Labor Code section 226.8(a)(2).

III. Violation of California Labor Code section 246:

California Labor Code section 246(a)(1) provides that an employee who on or after July 1, 2015 works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days.

Espinoza has worked for Lyft since October 2018, six days a week most weeks, and worked well over 30 days for Lyft within a year from the commencement of his employment with Lyft. He is therefore entitled to paid sick days as specified in California Labor Code 226.

California Labor Code section 246(b)(1) provides that an employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked.

While an employer may satisfy the accrual requirements of California Labor Code 246 by providing not less than 24 hours or three days of paid sick leave that is available for the employee to use by the completion of his or her 120th calendar day of employment, Lyft failed to avail itself of this option, because it provided no paid sick leave at all. (California Labor Code section 246(b)(4).)

While an employer may limit an employee's use of accrued paid sick days to 24 hours or three days in each year of employment, calendar year, or 12-month period, Lyft likewise failed to take advantage of this accrual limitation, because it promulgated no such accrual limitation policy. (California Labor Code section 246(d).)

While under California Labor Code section 246(j) an employer has no obligation to allow an employee's total accrual of paid sick leave to exceed 48 hours or 6 days, provided that an employee's right to accrue and use paid sick leave are not limited other than as allowed under California Labor Code section 246, Lyft is also ineligible for this safe harbor because it did not provide Espinoza with any paid sick leave whatsoever.

Espinoza has worked in excess of 1,891 hours for Lyft since the commencement of his employment with Lyft and is therefore entitled to at least 63 hours of paid sick leave.

IV. Violation of California Labor Code section 221:

California Labor Code section 221 provides:

"It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee."

As discussed in section II above, the "service fee" and "platform fee" charged to Espinoza by Lyft are illegal deductions from his wages. Not only do these fees violate California Labor Code section 226.8(a)(2), they also violate California Labor Code section 221.

Please be advised that pursuant to California Labor Code section 2699.3(c)(2)(A), you have 33 calendar days from the postmark date of this notice to cure your violations of California Labor Code sections 226.8(a)(1), 226.8(a)(2), 246 and 221, provide written notice by certified mail to me that you have done so, and provide online notice to the Labor and Workforce Development Agency, including a description of the actions taken.

Should you fail to do so, Espinoza reserves his right to seek a \$25,000.00 penalty pursuant to California Labor Code section 226.8(c), and seek an order that Lyft display prominently on its Internet Web site a notice that Lyft engaged in the willful misclassification of employees, seek restitution for unpaid sick leave and attorney's fees and costs pursuant to California Labor Code 248.5(e), seek penalties as provided for by California Labor Code section 225.5, and recover attorney's fees and costs as provided for by California Labor Code section 2699(g).

Thank you for your prompt attention to this matter.

Respectfully,



Joseph Gruchawka