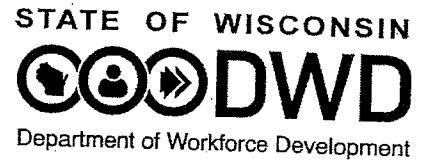


Exhibit C

Workforce Development
Division
ADJUDICATION SECTION
3
3-1687
27-4385
27-4981
(4) 227-4081
(for Hearing Impaired Callers)



Scott Walker, Governor
Raymond Allen, Secretary

TAVEREE Y SLY LUNDASI

Redacted

Complainant

vs.

UBER
275 W WISCONSIN AV
MILWAUKEE WI 53203
Respondent

NOTICE OF APPEAL RIGHTS

**REVIEW BY THE LABOR AND
INDUSTRY REVIEW COMMISSION**

Re: ERD Case No. CR201502534

The attached decision is a final decision. Any party who is dissatisfied with the attached Decision and Order of the Administrative Law Judge (or with earlier non-final decisions which could not be appealed until a final order was entered) may file a written petition for review by the Labor and Industry Review Commission.

The Petition for Review must be received by the Equal Rights Division within twenty-one (21) days from the date of the decision, or the decision will become final.

The Petition for Review should be mailed, faxed or brought to the Equal Rights Division at one of these addresses:

Equal Rights Division
Hearing & Mediation Section
819 North Sixth Street, Rm. 723
Milwaukee, Wisconsin 53203
FAX: (414) 227-4981

Equal Rights Division
Hearing & Mediation Section
201 East Washington Ave., Rm. A300
P.O. Box 8928
Madison, Wisconsin 53708
FAX: (608) 267-4592

Petitions filed by facsimile transmission shall be considered filed on the next business day if they are received after 4:30 pm or on a day when the offices are closed. (Sec. DWD 218.25(1)(b), Wis. Admin. Code)

A copy of the Petition for Review should be mailed to each of the other parties.

Dated and Mailed: May 12, 2016

cc: Complainant
Respondent
SHEILA SULLIVAN, Attorney for Complainant

Attachment

STATE OF WISCONSIN
DEPARTMENT OF WORKFORCE DEVELOPMENT
EQUAL RIGHTS DIVISION

Taveree Y. Sly-Lundasi

Redacted


Complainant,

v.

**DECISION AND ORDER ON APPEAL OF
PRELIMINARY DETERMINATION
ERD Case No. CR201502534**

Uber
275 W. Wisconsin Avenue
Milwaukee, WI 53203

Respondent.

In a complaint filed with the Equal Rights Division of the Department of Workforce Development on September 8, 2015, the Complainant alleged that the Respondent violated the Wisconsin Fair Employment Act, sec. 111.31-111.395, Wis. Stats., by discriminating against her because of her arrest record.

The Respondent filed a position statement with the Division regarding a companion case (CR201501851) involving a different complainant on September 14, 2015. In that position statement, the Respondent argued that the complaint should be dismissed because the Complainant was an independent contractor and Uber was not an employer or "other person" under the Wisconsin Fair Employment Act. The Respondent also argued that the complainant was attempting to enter into a relationship with Uber as an independent contractor and that such action was not actionable under the Wisconsin Fair Employment Act.

On January 13, 2016, an Investigator for the Division issued a Preliminary Determination and Order, concluding that the complaint must be dismissed because the Division did not have jurisdiction under the Wisconsin Fair Employment Act. The Investigator noted that the Complainant was an independent contractor and therefore not protected by the law because no employee-employer relationship existed.

The Complainant filed an appeal of the Preliminary Determination on February 1, 2016. The Respondent did not file a response to that appeal. This case was ready for review and the record was closed on February 22, 2016.

Arguments

The Complainant alleged in her complaint filed with the Division on September 8, 2015, the following:

- 1) She completed an application for an Uber driver during the first two weeks of April of 2015;
- 2) She was qualified to be an Uber driver, having a good driving record, experience as a bus driver and no convictions for any crimes;
- 3) She agreed to let the Respondent complete a background check on her;
- 4) On April 20 or 22, 2015, she was denied employment with Uber based on her background check;
- 5) The Complainant had been charged in 2010 for writing a worthless check;
- 6) The Complainant paid the value of the check and the charges were dismissed;
- 7) She believed there were errors on the background check the Respondent received relating to the Complainant, which were corrected after months of effort;
- 8) The corrected background check was resubmitted to the Respondent;
- 9) The Respondent denied the Complainant employment as a driver because she had been charged with writing a bad check.

With her complaint filed with the Division, the Complainant included copies of the background check, e-mails she received from the Respondent and e-mails she sent to the Respondent regarding its decision denying her the opportunity to become a driver.

The Respondent did not file a position statement regarding this case. However, it filed a position statement on September 14, 2015, for a companion case (CR201501851). In that case, the Complainant had been convicted of violent crimes that the Respondent argued were substantially related to the position of driving. The Respondent also argued that it did not perform transportation services, but rather offered a software application to facilitate services between drivers and independent, third-party transportation providers. The transportation providers were independent contractors. Transportation providers entered into a "Software Sublicense and Online Services Agreement" before they could access the software application to accept a request from a rider/customer. The Respondent noted that it did not own, lease or operate any vehicles for transporting users and did not employ people to operate vehicles.

The Respondent also wrote in its position statement that its sole relationship with transportation providers, like the Complainant, was to license the use of the software application to them. Transportation providers were not obligated to accept riders. They could use the software application whenever they wanted to use it. The Respondent did not direct or control the transportation providers' business.

The Respondent noted that in Wisconsin, "any independent transportation provider ... who wishes to use Uber's uberX software platform must enter into a "Rasier Software Sublicense & Online Services Agreement" ... with a subsidiary of Uber Technologies, Inc., Raiser LLC." The Respondent noted that like it, Rasier's sole business was offering the Uber app to transportation providers "as a lead generation tool, in exchange for which it receives a licensing fee."

The Respondent also included a copy of the "Rasier Software Sublicense & Online Services Agreement" with its position statement. Among other terms, the Agreement included the following:

The terms and conditions stated herein ("Agreement") constitute a legal agreement between you, an independent provider of rideshare or P2P transportation services ("Transportation Provider" or "You"), and one of the following entities ("Rasier" or "Company"):

...

Rasier is engaged in the business of providing lead generation to the Transportation Provider comprised of requests for transportation service made by individuals using Uber Technologies, Inc.'s mobile application ("Users").

...

Rasier does not provide transportation services, and is not a transportation carrier. In fact, the Company neither owns, leases nor operates any vehicles. The Company's business is solely limited to providing Transportation Providers with access, through its license with Uber Technologies, Inc. ("Uber"), to the lead generation service provided by the Software, for which the Company charges a fee ("Service").

You are an independent transportation provider who offers rideshare or P2P transportation services, which business you are authorized to conduct in the state(s) in which you operate.

...

Service Arrangement

Subject to the terms and conditions contain herein, this Agreement shall give you the right to accept requests to perform on-demand transportation services ("Requests") received by you via the Software, for which you shall be paid a Service Fee (as described more fully below). Each Request that you accept shall constitute a separate contractual engagement.

The Company will offer the Service to you during those times you choose to be available to receive the Requests. You shall have no obligation to use the Service at any specific time or for any specific duration. You shall have complete discretion to determine when you will be available to receive the Requests.

....

You shall be entitled to accept, reject, and select among the Requests received via the Service. You shall have no obligation to the Company to accept any Request.

...

Performance Arrangement

...

The Company shall have no right to require you to display Rasier's name, logo or colors on your vehicle(s) or to require that your driver(s) wear a uniform or any other clothing displaying Rasier's name, logo or colors.

The Company shall have no right to, and shall not, control the manner or prescribe the method you use to perform accepted Requests, subject to the terms of this Agreement.

...

You represent that you are an independent contractor engaged in the independent business of providing the transportation services described in this Agreement ...

The Parties recognize that both you and the Company are, or may be, engaged in similar agreements with others. Nothing in this Agreement shall preclude the Company from doing business with other independent transportation service providers, nor preclude you from entering into contracts similar to this Agreement with other lead generation providers. The Company neither has nor reserves the right to restrict you from performing other transportation services for any company, business or individual, or from being engaged in any other occupation or business.

...

Transportation Provider's Equipment

...

Except as specifically set forth in this Agreement, you are solely responsible for all costs and expenses incident to your personnel and equipment in performing services under this Agreement, including, but not limited to, costs of fuel, fuel taxes, wages, employment taxes, excise taxes, permits of all types, gross revenue taxes, road taxes, equipment use fees and taxes, licensing, insurance coverage and other tax, fine or fee imposed or assessed against the equipment or you by any state, local or federal authority as a result of an action by you or your employees, agents, or subcontractors in the performance of this Agreement.

...

Transportation Provider Personnel

...

The Company shall neither have nor exercise disciplinary authority or control over you, your employees, agents, or subcontractors, shall have no authority to supervise or direct your employees, agents, or subcontractors, and shall have no authority or right to select, approve, hire, fire or discipline any of your employees, agents, or subcontractors.

...

Relationship of Parties

This Agreement is between two co-equal, independent business enterprises that are separately owned and operated. The parties intend this Agreement to create the relationship of principal and independent contractor and not that of employer and employee. The Parties are not employees, agents, joint venturers or partners of each other for any purpose.

The driver or Transportation Provider was also required to have insurance on the vehicles used at their cost. The Company or Respondent provided the Transportation Providers with a mobile telephone with the Uber software application loaded on it. Transportation Providers were liable for any injuries to or damage suffered by the passengers or users they transported. The Transportation Providers were required to charge customers or users a set service rate for services provided. The Respondent did not pay the driver or Transportation Provider any wage or fee. In exchange for the Respondent providing the Transportation Provider with access to its software application, the Transportation Provider was required to pay the Company or Respondent a fee for each request for services it accepted and provided.

After receiving and reviewing the complaint and the Respondent's position statement relating to ERD Case No. CR201501851), an Investigator for the Division issued a Preliminary Determination, dismissing the complaint because she determined that the Division did not have jurisdiction under the Wisconsin Fair Employment Act.

In her appeal of the Division's Preliminary Determination and Order, the Complainant claimed that decisions in other jurisdictions indicated that the answer to whether Uber was an employer depended on state or federal law and the facts of the case. The Complainant noted that the issue of whether a driver was an independent contractor or an employee should be determined by a trier of fact. Because it was not settled law whether Uber drivers were employees or independent contractors, the Complainant asked that a hearing be scheduled so that issue could be addressed.

Discussion

The Wisconsin Fair Employment Act defines an employer to be
The state and each agency of the state and, except as provided in par.
(b), any other person engaging in any activity, enterprise or business
employing at least one individual.

Wis. Stat. Sec. 111.32(6)

The protections provided for individuals pursuant to the Wisconsin Fair Employment Act cover employees and not independent contractors. See *Jackson v. New Pitts Mortuary, LLC* (LIRC 10/31/2012).

To determine whether an individual is an employee or independent contractor, one must apply the "economic realities" test. See *Moore v. LIRC*, 175 Wis.2d 561 (Ct. Appl. 1993).

The "economic realities" test focuses on the employer's right to control the "means and manner" of the worker's performance. See *Jackson v. New Pitts Mortuary, LLC* (LIRC 10/31/2012). Other factors to consider when determining whether an individual is an employee or independent contractor include

- (1) The kind of occupation, with reference to whether the work usually is done under the direction of a supervisor or is done by a specialist without supervision;
- (2) The skill required in the particular occupation;
- (3) Whether the "employer" or individual in question furnishes the equipment used and the place of work;
- (4) The length of time during which the individual has worked;
- (5) The method of payment, whether by time or by the job;
- (6) The manner in which the work relationship is terminated;
- (7) Whether annual leave is afforded;
- (8) Whether the work is an integral part of the business of the "employer"
- (9) Whether the worker accumulates retirement benefits;
- (10) Whether the "employer" pays social security taxes; and
- (11) The intention of the parties.

Moore v. LIRC, 175 Wis.2d 561, 569 (Ct. Appl 1993).

It is not necessary to consider each of these factors when determining whether an individual is an independent contractor or employee. See *Jackson v. New Pitts Mortuary, LLC* (LIRC 10/31/2012).

Applying the "economic realities" test to the instant case, the Respondent did not exercise any control over the means and manner of the work that the Complainant would have completed as a Uber driver. This is stated in the Agreement that the Complainant would have been required to enter into with Rasier, LLC, a subsidiary of Uber Technologies, Inc. That Agreement noted that the parties

were not entering into an employer – employee relationship. Uber or Rasier did not supervise drivers or Transportation Providers. Transportation Providers were required to provide their own vehicles and cover the cost of insuring their own vehicles. Transportation Providers received payment from the customer or user, and not the Respondent. Transportation Providers paid Uber or Rasier a service fee for using their software application to secure customers for rides. Uber or Rasier did not provide any wages or employment benefits to the Transportation Provider. Transportation Providers were allowed to pick up riders or customers whenever they wanted to do so. Transportation Providers were allowed to enter into similar agreements with other providers. The Complainant and Respondent were not entering into an employment relationship when agreeing to the terms of the "Rasier Software Sublicense & Online Services Agreement."

Because the Respondent did not exercise the required control over individual drivers like the Complainant, there was no employer-employee relationship between the Complainant and Respondent. The Complainant was an independent contractor, and was not afforded the protections of the Wisconsin Fair Employment Act.

Based upon a review of the file, the submissions of the parties, and the discussion above, the Administrative Law Judge issues the following:

ORDER

That the Preliminary Determination and Order in this matter is affirmed and the complaint in this matter is dismissed with prejudice.

Dated at Milwaukee, Wisconsin _____

MAY 12 2016



Stephanie M. Brown
Administrative Law Judge

cc: Complainant
Respondent
Sheila Sullivan, Attorney for Complainant