



# Drivers accuse car app Uber of dictating terms, skimming tips

*Tech startup embroiled in a lawsuit with many of its drivers, angry at the company for not paying more of their expenses*

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SAN FRANCISCO — Engineers, MBAs and college dropouts flock to the San Francisco Bay Area, the mecca of all things startup, with the hopes of founding a company that's a "game-changer."

Uber, the mobile app that allows users in 35 countries to book town cars and cabs via GPS and pay with a stored credit card, has established itself as one such firm, having upended the traditional taxi-cab business model.

Rather than having passengers stand on a street corner, hoping a cab will drive by, or telephoning any one of a dozen taxi companies with the hopes of getting a ride who-knows-when, Uber allows them the convenience of knowing exactly when their cars will arrive. The app's success has spawned similar outfits like Sidecar and Lyft.

But for all of Uber's happy customers, and an estimated \$3.5 billion in valuation, not everyone is pleased with the company. Uber is currently embroiled in a class-action lawsuit in California, filed by Douglas O'Connor and Thomas Colopy, two San Francisco-area Uber drivers who allege the company has skimmed half of the 20 percent gratuity charge that Uber adds to some fares. And they say Uber's practice of telling customers that gratuity is included in the total ride charge discourages them from tipping drivers at all.

"Uber has prevented its drivers from receiving tips from customers based upon its deceptive and misleading communications to customers," reads the complaint, which was filed in San Francisco in

August 2013. In December, federal district court Judge Edward Chen rejected Uber's move to dismiss the drivers' claims, which effectively allowed the class-action lawsuit to go forward.

Attorneys on both sides are currently sparring over the enforceability of an arbitration clause in Uber's driver agreement that bars them from filing class-action suits, and which O'Connor and Colopy's attorneys say the company added to anticipate such lawsuits, following a previous suit filed in Massachusetts in December 2012. They'll return to the courtroom in June for more arguments in front of the judge.

They'll also debate whether or not the drivers can be considered employees of the company. Uber considers its drivers to be independent contractors, and doesn't reimburse them for gas, car insurance or other driving-related charges they incur the way taxi companies often do.

But Uber maintains that the drivers' claims are baseless because it is strictly a technology company. Uber communications director Andrew Noyes told Al Jazeera that the drivers are licensees of Uber's software, nothing more. "Uber doesn't employ drivers, and we don't own cars," he said. "We make the technology that they use to build their businesses, kind of like people using Microsoft."

He added that he couldn't comment specifically about the class-action lawsuit and "wouldn't want drivers to, either," except to say that it's "a small group of people" who are participating.

But the drivers posit that Uber is doing verbal gymnastics to get out of paying them their due. "This is how they cheat us," Fazi Kamel, 34, an Uber driver from San Francisco and owner of Fazi's Limousine Service, told Al Jazeera. "This is why they use the word 'partner' instead of 'driver.'"

Kamel is part of a group of Bay Area drivers who have been staging multiple protests at Uber's San Francisco headquarters since the spring of 2013, asking to be called employees of the company.

Kamel, who started driving for Uber at the end of 2012, said he ends up netting less than what he did as a regular taxi driver. In driving for Uber, he had to purchase his car, and spends \$40 or \$50 a day on gas in addition to about \$500 a month on car insurance.

"Really, when you make the calculation, you're making less than a cab driver, and you have more responsibility than a cab driver," he said.

That's because Uber drivers are supposed to behave politely and keep their cars clean according to standards laid out by the company. "They tell everybody, we are a software company, and that's not true," Kamel told Al Jazeera. "They're a transportation company. They don't want to say it, to save money. You cannot make the rules, and put me out on the street, and make profits on my back, and when there's a problem you tell me I'm a subcontractor."

The employee question came into play in a tragic scenario, after a 6-year-old girl was struck and killed by an Uber driver on New Year's Eve in San Francisco. The girl's parents are suing Uber, claiming the driver was distracted by the mobile app, but Uber has said it's not responsible for her death since he didn't have a passenger at the time of the accident.

### **A new economy**

The rise of the so-called sharing economy has meant that cities and states are considering new rules to support a whole new way of doing business. In September 2013, for example, California became the first U.S. state to create a new regulatory framework for apps like Uber, Lyft and Sidecar, placing them in a special category called Transportation Network Companies (TNC). The companies are required to apply for a permit through the state's Public Utilities Commission, carry at least \$1 million in insurance and

conduct regular vehicle inspections and driver training programs. They're also required to do background checks on drivers and have a zero tolerance policy on drugs or alcohol.

Janelle Orsi, an attorney in Oakland, California and co-founder of the Sustainable Economies Law Center, specializes in helping clients navigate the laws of the sharing economy. She told Al Jazeera in an email that the Uber case is a tough call, because both the company and the drivers have strong arguments.

"One thing is certain: The more that Uber dictates how drivers work, what they charge, and so on, the more likely it is that a court would find that they are creating employment relationships with drivers," she wrote.

In Paris, taxi drivers, who were worried about losing business to ridesharing companies, successfully lobbied for a rule that Uber and its ilk would have to wait 15 minutes before picking up new passengers so as to relinquish any advantage.

But in the Bay Area, techies have embraced the ethos that technology companies are making the world a better place.

In the dimly lit upstairs bar at the Battery, the members-only social club and hotel launched by tech royals and Bebo-cofounders Michael and Xochi Birch, club members were adamant that there's no other way to hire a cab in San Francisco than a ridesharing service. It's all about the sharing economy, they said.

Sacha Tueni, 40, CEO and co-founder of Changemakrs, a site for sharing and reading inspirational quotes, moved to San Francisco from Germany in 2009 to work for Facebook, and found that the city was a taxi wasteland.

"The thing that blew my mind was, when I was going to a business meeting in the city, it was very difficult to plan them without my own car, because you could never get a cab," he told Al Jazeera. "You had to end meetings early, you just had to hope and pray, and have meetings on public transport."

The low point, he said, was when a friend was visiting from New York and needed an early-morning cab before catching her flight home. The dispatch service told them they could enter the 5:30 a.m. pick-up time into the system, but there was no guarantee the cab would show up. He recommended they do the same thing for multiple cab companies and hope for the best.

"I never thought that getting a cab could be such a problem," he recalled. "And here we are in the tech capital of the world!"

A few years later, he was thrilled to encounter Uber, Lyft and Sidecar, whose drivers, he said, were pleasant and work on a cash-free basis. "I'll do everything I can to never take a cab again," he said. "If I would behave in the workplace to my coworkers the same way the cab drivers to their customers, I wouldn't have a job."

But O'Connor and Colopy's attorneys, who say about 100 drivers across the country have contacted them so far about participating in the class-action lawsuit, allege that Uber is required by California law to reimburse drivers for employment-related expenses.

"To have a company like this and have this vast network of drivers and claim that it doesn't have any responsibility when there's this accident — I think it's trying to skirt its obligation," Shannon Liss-Riordan, a partner in the law firm Lichten & Liss-Riordan who is representing the drivers, told Al Jazeera. "Basically what the company is doing is trying to shift the cost of doing business to its workers."

