

Uber Class Action Update: Court Finds Arbitration Agreement Unenforceable and Broadens Class of Drivers

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The Uber saga continues in *O'Connor v. Uber Technologies, Inc.* – a closely watched case that will impact the future of the [gig economy](#). Last time we visited this case, the 9th Circuit Court of Appeals had [declined to review](#) the district court's class certification decision, which certified a class of thousands of Uber drivers. This time around, the District Court issued an [order](#) that expanded the original class. But Uber has already countered with a move of its own in response to this latest decision. We discuss the latest below.

The District Court had initially excluded from the class Uber drivers who were subject to an arbitration agreement that required them to arbitrate their disputes with Uber individually. However, in this latest decision, the District Court decided to void the arbitration agreement, because it included a Private Attorney General Act (PAGA) waiver. PAGA permits individuals to pursue Labor Code violations in a class or representative action against employers. Earlier this year, the California Supreme Court and the 9th Circuit each found that PAGA waivers preventing an employee from pursuing a PAGA claim in *any* forum are void as a matter of public policy – which is exactly what the agreement did here. In response, Uber tried to sever the PAGA waiver and asked the court to enforce the rest of its arbitration agreement, but the Court was having none of it (even though the arbitration agreement allowed the driver to opt-out).

The Court's decision to void the arbitration agreement making previously ineligible drivers now eligible to join the class has the potential to increase the class closer to a reported 160,000 drivers in California.

This outcome should serve as a cautionary tale for employers addressing PAGA claims in their arbitration agreements. Employers must be careful to provide an appropriate forum for bringing such claims in a clearly-stated way and to avoid the inclusion of a blanket waiver.

But the Court's decision was not the end of the story. Two days after the District Court's decision, Uber distributed new arbitration agreements to its drivers requiring them to waive their right to participate in class-action lawsuits, or email Uber within 30 days to opt-out. Of course, the new agreement corrected the PAGA issue. After the plaintiffs objected on the basis that this constituted an improper communication with class members, the Court said it couldn't necessarily stop Uber from utilizing this new agreement, but that (i) it wouldn't enforce it against the drivers already certified in this case; and (ii) Uber cannot communicate with class members without the Court's or plaintiffs' counsel's approval.

We will continue to track the latest developments in this case.

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