

# Uber seeks to head off lawsuits with new binding driver agreement

By Carolyn Said December 11, 2015 Updated: December 11, 2015 7:53pm

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A man leaves the headquarters of Uber in San Francisco last year. Two days after a federal judge expanded a class-action suit by California Uber drivers seeking to be employees, Uber sent its U.S. drivers a 21-page legal agreement that would bar them from participating in future class-action suits against the company.

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Two days after a federal judge **expanded a class-action lawsuit** by California Uber drivers seeking to be employees and not contractors, Uber on Friday sent all its U.S. drivers a 21-page legal agreement that would bar them from participating in future class-action suits against the company.

All 400,000-plus drivers cannot receive any ride requests until they accept **the agreement**, which lays out a lengthy provision requiring mandatory arbitration starting on page 15 and flagged on the first page. While it includes a way to opt out, many drivers may not understand that or may fear retaliation for doing so.

“We believe this is an illegal attempt by Uber to usurp the court’s role now in overseeing the process of who is included in the class,” said Shannon Liss-Riordan, the Boston lawyer representing the drivers, in an e-mail.

Liss-Riordan said she will ask U.S. District Judge Edward Chen on Thursday for an **emergency motion to block Uber from enforcing the new agreement.**

An Uber spokesman said the company told Chen in court Thursday of its intentions and that he verbally approved them. Uber said it will produce a transcript of that interchange soon. Liss-Riordan’s emergency motion said she had not been informed of any such authorization.

“We believe strongly that our agreements are valid, but we are making some changes and clarifications to remove uncertainty for drivers and for us as we work through our multiple appeals on this issue,” the company said.

Uber said the provision will not affect drivers who were already certified as eligible to be part of the existing court case, O’Connor vs. Uber Technologies. However, that point is not explained in the document sent to drivers.

Drivers can still work if they accept the agreement while e-

mailing Uber at [optout@Uber.com](mailto:optout@Uber.com) to preserve their right to participate in future class-action lawsuits. They have 30 days after agreeing to the document to opt out of mandatory arbitration.

But the opt-out provision requires reading the entire document and understanding a fair amount of legalese. “Many Uber drivers speak English as a second language and would have a lot of trouble reading and deciphering a 21-page PDF,” said Harry Campbell, a Los Angeles driver who writes [TheRideshareGuy.com](http://TheRideshareGuy.com) blog.

One East Bay driver, who asked not to be identified because he fears retaliation from Uber, said he had not immediately understood that he could opt out of the provision. “That wasn’t obvious to me,” said that driver, who graduated from UC Berkeley and worked in a professional job for many years. “Of course, I don’t have a lot of interest in reading 10-point type on a cell phone. I didn’t want to have to use a magnifying glass.”

The driver said he interpreted the new agreement “as an ‘it’s my way or the highway proposition,’ since if you don’t sign it, you can’t log on.”

Retaliation by Uber against drivers for opting out of the arbitration clause or for pursuing First Amendment rights to criticize the company would be illegal, but numerous drivers commenting on social media seemed unaware of this.

Chen’s Wednesday ruling had said that a previous Uber arbitration clause was invalid, meaning that the vast majority of the 160,000 people who have ever driven for Uber in California could participate in the class-action case.

The lawsuit claims that Uber drivers should be reclassified as employees, and should be entitled to reimbursement for their mileage expenses at the Internal Revenue Service rate of 57.5

cents per mile, partial reimbursement for their smartphone expenses, and some amount for tips on each trip, going all the way back to when the company was founded in 2009. Even for a company with Uber's deep pockets, losing the case could hurt, both with a multimillion-dollar payment and a revamping of its business model.

Uber contends that drivers are so unique and have so much flexibility that they should continue to be considered independent contractors. Most drivers appreciate "being their own boss," Uber has said, backing that up with various polls and statements from drivers.

Uber is hardly alone in asking workers to forswear their day in court by accepting mandatory arbitration. **Such clauses have become ubiquitous in the fine print for numerous consumer transactions**, including buying products, applying for credit cards, visiting the doctor or starting a new job.

Legal experts not involved in the case had different stances on Uber's latest move.

"Uber appears to be trying to circumvent the judge's ruling by amending the arbitration and class-action-waiver provisions in its driver agreements in order to remedy those parts that the judge deemed unconstitutional," said Lisa Richman, an attorney who represents companies in arbitration cases, in a statement.

But an employment lawyer disagreed.

"It is not an illegal tactic by Uber, and I don't think Judge Chen will block it," said attorney Todd Scherwin in an e-mail. "Uber's agreement appears to be straightforward and up-front regarding the waiver."

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