

STEVAN JOHNSON

**PRIORITY MAIL EXPRESS**

**June 26, 2017**

Ms. Liane Hornsey  
**UBER TECHNOLOGIES, INC.**  
Chief of Human Resources  
1455 Market Street  
San Francisco, California 94103  
Label/receipt no. EL 648393121 US

RE: May 22, 2017 Addendum facilitates Uber/Lyft “wage-fixing” combination

Dear Ms. Hornsey:

Labor trafficking is a modern-day form of slavery. *See* 22 U.S.C. § 7101(a).

Since December 6, 1865 slavery and involuntary servitude have been unconstitutional in the United States. *See* U.S. Const. amend. XIII, § 1. Under Section 2 of the Thirteenth Amendment to the Constitution of the United States, the U.S. Congress is vested with “power to enforce this article by appropriate legislation.” *See* U.S. Const. amend. XIII, § 2.

To this end, the Victims of Trafficking and Violence Protection Act of 2000 (“TVPA”) was approved October 28, 2000 “to combat trafficking in persons.” *See* 114 Stat. 1464.

Under the TVPA, the U.S. Congress found slavery and involuntary servitude to contemporaneously manifest “through the use of force, fraud, or coercion.” *See* 22 U.S.C. § 7102(9)(B). It is believed UBER TECHNOLOGIES, INC. (“Uber”) is participating in a form of labor trafficking with respect to U.S. transportation workers (“Uber Drivers”) by systematically classifying each individual member of this class of U.S. workers as being an “independent contractor.”

In this manner, *Uber* induces *Uber* Drivers to transport *Uber* Riders in a vehicle for a Fare calculated by *Uber*, but made to appear under the May 22, 2017 Addendum as though “the Rider Payment...is treated the same as if that Rider paid you directly for that Ride” affecting interstate commerce. *See* 26 Stat. 209. As such, by letter dated June 22, 2017 an Order was sought to be issued under 15 U.S.C. § 45(b) for *Uber* to cease and desist participation in an alleged “wage-fixing” combination being facilitated by the May 22, 2017 Addendum.

Enclosed herewith is a copy of that June 22, 2017 letter to Commissioner Terrell McSweeney at the Federal Trade Commission (“FTC”).

Additionally, the Antitrust Guidance for Human Resource Professionals jointly released by the U.S. Department of Justice (“DOJ”) and FTC in October 2016 can be downloaded from the DOJ website. *See* <https://www.justice.gov/atr/file/903511/download>.

The *Uber* and Lyft, Inc. “wage-fixing” combination was raised June 22, 2017 with the FTC because it is unfair to City of Boston Hackney Carriage Drivers (“taxicab drivers”). The “wage-fixing” is unfair on account of the anticompetitive nature of the labor arrangement *Uber* has formed throughout the U.S. with *Uber* Drivers to fix the price of Fares unencumbered by the Fair Labor Standards Act of 1938, as amended (“FLSA”). *See* 52 Stat. 1060.

Conventional labor arrangements dictate *Uber* should be under an obligation to remit “wage” payments to *Uber* Drivers pursuant to Section 6 of the FLSA, as contemplated by 29 C.F.R. § 531.35 - (“Free and clear” payment; “kickbacks”), in contrast to the **May 22, 2017 Addendum** being used to force *Uber* Drivers to agree to pay *Uber* a purported “service fee” to be permitted to perform work for *Uber* by providing transportation in a vehicle to *Uber*’s Riders. Support for this proposition is found in *Administrator’s Interpretation No. 2015-1* issued July 15, 2015.

*Uber* Riders provide *Uber* personal information to establish an account to obtain an *Uber* Ride.

*Uber* considers the personal information a Rider provides to be *Uber*’s proprietary property. This proprietary information is controlled by *Uber* during the life of each labor arrangement formed with any *Uber* Driver. Labor arrangements which are expressly intended to benefit *Uber* financially. Moreover, *Uber* --- not an *Uber* Driver or any other *Uber* employee --- maintains control of the millions of Rider accounts upon termination by either party privy to any type of contract for labor with *Uber*.

*Administrator’s Interpretation No. 2015-1* (“AI 2015-1”) was issued by the Administrator of the Wage and Hour Division for the Department of Labor (“DOL”) to provide additional guidance regarding who is an employee under the FLSA in an effort to ultimately curtail misclassification of workers as “independent contractors” by employers. “This inquiry is not governed by the ‘label’ put on the relationship by the parties or the contract controlling the relationship, but rather focuses on whether ‘the work done, in its essence, follows the usual path of an employee.’” *Rutherford Food Corp. v. McComb*, 331 U.S. 722, 729 (1947).

Non-employee status deprives *Uber* Drivers equal protection of the FLSA. *See 17 Stat. 13.*

Because, according to DOL AI 2015-1, “most workers are employees under the FLSA.”

It shows under Section 3(g) of the FLSA that “‘employ’ includes to...permit to work.”

Can you prevent *Uber* Drivers from being denied employee status under the FLSA?

Do you derive any benefits because *Uber* agrees to permit *Uber* Drivers to work?

Sincerely,

~~STEVAN JOHNSON~~  
City of Boston  
Hackney Carriage Driver

• *Enclosures*

Cc: Via Certified Mail

COVINGTON & BURLING, LLP  
Label/receipt no. 7017 0190 0000 4731 7117

U.S. DEPARTMENT OF JUSTICE  
Label/receipt no. 7017 0190 0000 4732 2227

**Terrell McSweeney, Commissioner**  
FEDERAL TRADE COMMISSION  
600 Pennsylvania Avenue, NW  
Washington, D.C. 20580

COPY

Re: Uber Technologies, Inc. - (illegal contract for labor)

Dear Commissioner McSweeney:

On July 2, 1890 the U.S. Congress declared every contract in restraint of trade or commerce among the Several states illegal under the Sherman Antitrust Act. See 26 Stat. 209.

Uber Technologies, Inc. ("*Uber*") and Lyft, Inc. ("*Lyft*") pay their drivers a share of each fare charged for providing transportation of individuals by a vehicle. Under Section 301(3) of Title III of the Americans with Disabilities Act of 1990 ("*ADA*"), the term "*demand responsive system*" means "any system of providing transportation of individuals by a vehicle, other than a system which is fixed route." Therefore, *Uber* Drivers and *Lyft* Drivers are unmistakably operating in a "*demand responsive system*" as contemplated by the ADA. See 42 U.S.C. § 12181(3). Yet, *Uber* and *Lyft* do not classify U.S. drivers as employees. Instead, *Uber* and *Lyft* systematically classify U.S. drivers as "independent contractors" using non-negotiable adhesion contracts crafted to subject a class of U.S. transportation workers to suffer the deprivation of equal protection of rights enshrined in the Constitution and laws of the United States. See 22 U.S.C. §§ 7101(a) and 7102(9)(B) - ("a contemporary manifestation of slavery...through the use of force, fraud, or coercion").

In this manner, *Uber* and *Lyft* have effectively fixed the price of U.S. driver wages at **\$0 per/hr** for purposes of the Fair Labor Standards Act of 1938, as amended ("*FLSA*"). See 52 Stat. 1060. According to the Antitrust Guidance for Human Resource Professionals jointly released October 2016 by the FTC and DOJ, "wage-fixing" agreements among employers are *per se* illegal under the antitrust laws.

The nationwide combination of *Uber/Lyft* contracts for labor offered to U.S. drivers to perform work, intended to benefit *Uber and Lyft* financially, appears to constitute an unfair method of competition and is therefore believed to violate Section 5 of the Federal Trade Commission Act. 38 Stat. 717. Further, it seems that these two (2) San Francisco, California based corporations have agreed not to classify any U.S. driver as an "employee" who would then be entitled to payment of *wages* pursuant to 29 U.S.C. § 206, as contemplated by Section 3(m) of the FLSA. See 29 C.F.R. § 531.35 - ("Free and clear" payment; "kickbacks").

Under threat of "*serious harm*" arising out of the termination of the labor arrangements (which appear to be racially discriminatory), *Uber* effectively forces U.S. drivers to accept a May 22, 2017 Addendum to modify *Financial Terms* that many have been induced to become economically depend upon as a livelihood. The term "*serious harm*" is defined by the Victims of Trafficking and Violence Protection Act of 2000, as amended. See 18 U.S.C. § 1589(c)(2).

Issuance of cease and desist order is hereby sought pursuant to 15 U.S.C. § 45(b).

June 22, 2017

Respectfully requested.

COPY

STEVAN JOHNSON  
City of Boston  
Hackney Carriage Driver

JUN 26 2017



# ANTITRUST GUIDANCE FOR HUMAN RESOURCE PROFESSIONALS

DEPARTMENT OF JUSTICE  
ANTITRUST DIVISION

FEDERAL TRADE COMMISSION

OCTOBER 2016

This document is intended to alert human resource (HR) professionals and others involved in hiring and compensation decisions to potential violations of the antitrust laws. The Department of Justice Antitrust Division (DOJ or Division) and Federal Trade Commission (FTC) (collectively, the federal antitrust agencies) jointly enforce the U.S. antitrust laws, which apply to competition among firms to hire employees. An agreement among competing employers to limit or fix the terms of employment for potential hires may violate the antitrust laws if the agreement constrains individual firm decision-making with regard to wages, salaries, or benefits; terms of employment; or even job opportunities. HR professionals often are in the best position to ensure that their companies' hiring practices comply with the antitrust laws. In particular, HR professionals can implement safeguards to prevent inappropriate discussions or agreements with other firms seeking to hire the same employees.

JUN 26 2017



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**Administrator's Interpretation No. 2015-1**

July 15, 2015

Issued by ADMINISTRATOR DAVID WEIL

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**SUBJECT:** The Application of the Fair Labor Standards Act's "Suffer or Permit" Standard in the Identification of Employees Who Are Misclassified as Independent Contractors.

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Misclassification of employees as independent contractors is found in an increasing number of workplaces in the United States, in part reflecting larger restructuring of business organizations. When employers improperly classify employees as independent contractors, the employees may not receive important workplace protections such as the minimum wage, overtime compensation, unemployment insurance, and workers' compensation. Misclassification also results in lower tax revenues for government and an uneven playing field for employers who properly classify their workers. Although independent contracting relationships can be advantageous for workers and businesses, some employees may be intentionally misclassified as a means to cut costs and avoid compliance with labor laws.

The Department of Labor's Wage and Hour Division (WHD) continues to receive numerous complaints from workers alleging misclassification, and the Department continues to bring successful enforcement actions against employers who misclassify workers. In addition, many states have acknowledged this problematic trend and have responded with legislation and misclassification task forces. Understanding that combating misclassification requires a multi-pronged approach, WHD has entered into memoranda of understanding with many of these states, as well as the Internal Revenue Service.<sup>1</sup> In conjunction with these efforts, the Administrator believes that additional guidance regarding the application of the standards for determining who is an employee under the Fair Labor Standards Act (FLSA or "the Act") may be helpful to the regulated community in classifying workers and ultimately in curtailing misclassification.

The FLSA's definition of employ as "to suffer or permit to work" and the later-developed "economic realities" test provide a broader scope of employment than the common law control test. Indeed, although the common law control test was the prevalent test for determining whether an employment relationship existed at the time that the FLSA was enacted, Congress rejected the common law control test in drafting the FLSA. See *Walling v. Portland Terminal*

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<sup>1</sup> Information about the Department's Misclassification Initiative and related memoranda of understanding is available at <http://www.dol.gov/whd/workers/misclassification/>.

JUN 26 2017

RASIER, LLC

**ADDENDUM**

Last update: May 22, 2017

You entered into a Technology Services Agreement with Rasier, LLC or one of its affiliates ("**Company**", "**we**" or "**us**") for the use of the Uber Services in connection with your Transportation Services (as amended, the "**Agreement**"). This is an addendum to that Agreement that updates fare and payment terms and replaces Section 4 (Financial Terms) of the Agreement in its entirety. By clicking "Yes, I agree", you agree to be bound by the additional terms below.

Capitalized terms used herein but not defined shall have the meanings ascribed to them in the Agreement, and, for the purposes of this addendum, "**Ride**" shall have the same meaning as "Transportation Services" and "**Rider**" shall have the same meaning as "User". Except where modified above, the remainder of the Agreement shall remain unchanged. This addendum replaces and supersedes any "Service Fee Addendum" or "Service Fee Schedule" that you have previously agreed to.

**Section 4 of the Agreement is replaced in its entirety with the following:**

**4. Financial Terms**

**4.1 Fares.** You are entitled to a Fare for each Ride that you provide, where "**Fare**" is a base fare amount plus actual distance and/or time amounts (or as required by applicable law), provided that distance and/or time amounts may be predetermined in certain situations, such as for flat rate and minimum fare trips, or estimated where GPS information for that trip is unavailable. Fares vary by region (detailed at partners.uber.com), may vary depending on local supply and demand, and may also be adjusted in our discretion based on local market factors. We will provide you with notice of any change to any base fare or applicable distance and/or time amounts, as well as flat rate and minimum trip fares, and by continuing to use the Uber Services, you are deemed to accept these changes. The Fare does not include gratuity. Additionally, even though we often separately advertise and market the Uber Services and other products and services generally (including discounts or promotions to Riders that reduce what they ultimately pay for a Ride), this does not entitle you to any additional payment.

Unless we indicate to you otherwise, for each Ride, the Rider will pay an amount that includes the Fare, applicable Tolls, applicable fees retained by us, and applicable taxes and surcharges, as well as the Service Fee described in Paragraph 4.4 below (collectively, the "**Rider Payment**"). You appoint us as your disclosed limited payment collection agent solely to accept the Rider Payment from Riders via the Uber Services' payment processing functionality, and the Rider Payment to us (acting as your agent) is treated the same as if that Rider paid you directly for that Ride. The Rider Payment is the only payment that will be made to you by a Rider for a particular Ride. By accepting a Ride, you indicate your agreement to charge the Rider Payment at the amount recommended by us as your agent. The Fare portion of the Rider Payment shall operate as a default, but following completion of a Ride you are entitled to request to charge a lower Fare, and we will consider these requests in good faith. Your Fares and applicable Tolls will be remitted to you on at least a weekly basis. If you

JUN 26 2017

have agreed to any other amounts being deducted from your Fares with any party (such as vehicle financing or lease payments, or mobile device charges), those amounts will be deducted before remittance to you, and we may determine the order of these other deductions if allowed by law.

If reasonable, we may adjust a particular Rider Payment (including the Fare portion) for reasons such as inefficient routes, failure to properly end a Ride or technical error on our Services. In more serious situations, such as fraud, charges for Rides that did not take place or Rider complaints, we may cancel or refund a Rider Payment entirely (including the Fare portion). If a Rider cancels their Ride prior to your arrival at the pick-up location, we may charge that Rider a cancellation fee on your behalf, and in this case the cancellation fee will be treated the same as a Rider Payment for completed Rides.

**4.2 Receipts.** The Uber Services provide you with a system for delivering receipts to your Riders. At the end of a Ride, the receipt will be electronically delivered to your Rider on your behalf. It includes a breakdown of amounts charged and certain information about you and that Ride (including your details and the route taken). If you think a correction should be made to the amounts charged, you must let us know in writing within 15 business days after the Ride took place or we will have no further responsibility and you waive your right to later dispute the amounts charged.

**4.3 Taxes.** You are required to follow applicable law regarding your tax registration, calculation and remittance obligations for your Rides and provide us with all relevant tax information. You are responsible for taxes on your own income. Based on applicable tax or regulatory considerations, we may choose in our reasonable discretion to collect and remit taxes applicable to your Rides, and may provide any of the relevant tax information you have given us directly to the applicable tax authorities on your behalf or otherwise. For the purpose of this section, references to "tax" includes federal and state income, gross receipts, sales and self-employment taxes, and similar charges.

**4.4 Our Service Fee.** In consideration of your use of the Uber Services, you will pay us a service fee ("**Service Fee**") that is on a per-Ride basis. For each Ride, the Service Fee equals the Rider Payment minus: (a) the Fare; (b) Tolls; (c) any other fees retained by us (e.g., booking fee); and (d) applicable taxes and surcharges. In the event of a Ride where the Fare is greater than the Rider Payment (excluding fees retained by us, and taxes and surcharges), no Service Fee will be charged for that Ride. In such case, any excess amounts that you receive will be shown as an adjustment to your Service Fee(s) (or if necessary, as an adjustment to another payment owed to you).

JUN 26 2017