

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

EQUAL RIGHTS CENTER,)	
)	
Plaintiff,)	
)	
v.)	No. 17-cv-1272 (KBJ)
)	
UBER TECHNOLOGIES, INC., <i>et al.</i> ,)	
)	
Defendants.)	
)	

MEMORANDUM OPINION

Providers of public transportation services have long been subject to federal and state regulation with respect to the provision of accommodations for people with physical disabilities. *See, e.g.*, 42 U.S.C. § 12184; D.C. Code §§ 2-1402.31(a)(1), 2-1401.02(24). In the instant action, plaintiff Equal Rights Center (“ERC”) alleges that defendant Uber—a company that maintains a ride-sharing application (“app”) that connects users to drivers—systematically discriminates against those disabled individuals in the District of Columbia who use non-foldable wheelchairs, because Uber’s wheelchair accessible ride-share services are allegedly far less reliable and predictable than its non-wheelchair accessible offerings. (*See* Am. Compl., ECF No. 22, ¶¶ 2–12.) ERC also alleges that Uber requires wheelchair users to pay higher fares and endure longer wait times than people who use Uber’s standard transportation service. (*See id.* ¶¶ 79–96.) In the two-count complaint that ERC has filed against Uber in the instant case, ERC claims that Uber qualifies as a public transportation service for the purpose of federal and local law, and, therefore, that the identified

disparities amount to unlawful discrimination under Title III of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12181 *et seq.*, and the District of Columbia Human Rights Act (“DCHRA”), D.C. Code § 2-1401.01 *et seq.* (*See id.* ¶¶ 117–42.)

Before this Court at present is Uber’s motion to dismiss ERC’s claims pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. (*See* Defs.’ Mot. to Dismiss 1st Am. Compl. (“Defs.’ Mot.”), ECF No. 25; Mem. in Supp. of Defs.’ Mot. to Dismiss 1st Am. Compl. (“Defs.’ Mem.”), ECF No. 25-1.) As a threshold jurisdictional issue, Uber argues that ERC lacks Article III standing to sue, either on its own behalf or on behalf of its members. (*See* Defs.’ Mem. at 18–28.)¹ Uber maintains further that ERC has not plausibly alleged that the ADA and DCHRA apply to its app, and that even if those statutes do apply, Uber’s services do not constitute discrimination and cannot be reasonably modified. (*See id.* at 28–45.) Uber also asserts that the DCHRA claim is barred by that statute’s one-year limitations period. (*See id.* at 46.)

Ever mindful of the fact that all that is required at this early stage of the litigation is for ERC to make *plausible* claims of liability, this Court must reject Uber’s dismissal arguments, for the reasons explained fully below. As a threshold matter, the Court finds that ERC has associational standing to bring the complaint’s ADA and DCHRA discrimination claims on behalf of its members. The Court also concludes that the complaint contains plausible allegations concerning Uber’s eligibility for regulation under section 12184 of Title III of the ADA and the DCHRA; that ERC has alleged circumstances that plausibly sustain discrimination claims under the cited statutes; and that ERC’s DCHRA claim is timely. Therefore, Uber’s motion to dismiss ERC’s

¹ Page numbers herein refer to those that the Court’s electronic case-filing system automatically assigns.

complaint will be **DENIED**. A separate Order consistent with this Memorandum Opinion will follow.

I. BACKGROUND

A. ERC's Allegations Regarding Uber's Services

ERC is a non-profit corporation that focuses, among other things, on combatting discrimination against people with disabilities in the public and private transportation sectors. (*See* Am. Compl. ¶¶ 14, 17.) According to ERC's complaint, Uber operates a ridesharing service that enables people to "secure rides more swiftly, reliably, and conveniently—and then ride more cheaply—than was possible under taxi service alone." (*Id.* ¶ 1.) Uber delivers its service via a smartphone app through which users can "hire a private vehicle for transportation in any region in which Uber operates" (*see id.* ¶ 43), including in the District of Columbia, where Uber's services have been available since 2011 (*see id.* ¶ 4).

In order to use Uber, a person must download the app and create an account, which requires providing a phone number and credit card information. (*See id.* ¶ 44.) The user can then request rides through the app; specifically, users identify pick-up and drop-off locations, and thereby provide information about their whereabouts and destination, and Uber's software system then uses that information to "determine[] which nearby drivers will have the opportunity to respond and direct[] the request to [the drivers]." (*Id.* ¶ 45.) When a driver accepts a request, Uber "notifies the user of the driver's name, phone number, vehicle make and model, license plate number, estimated time of arrival, and customer satisfaction rating[,] and the user can track that vehicle's progress as it makes its way to the pick-up location. (*Id.*) Moreover, at the

end of the trip, Uber “automatically processes payment with the user’s credit card information.” (*Id.* ¶ 46.) Uber then takes a 20 to 25 percent cut of the total payment, giving the rest to the driver. (*See id.*)

Uber “has approximately 30,000 active drivers in the D.C. area” who collectively provide users with a variety of ride options. (*See id.* ¶ 59.) UberX, which uses standard vehicles, is “Uber’s most popular service.” (*Id.* ¶ 48.) Uber’s other options include UberBlack, which involves “high-end rides with professional drivers”; UberXL, which provides “seating capacity for up to six passengers”; and UberSUV, which uses “luxury SUVs with seating capacity for up to six passengers.” (*Id.* ¶ 49.) Uber also currently provides two wheelchair accessible user options: TAXI WAV, which allows riders to hail D.C. taxi cabs through the Uber app (*see id.* ¶ 9), and UberWAV, a relatively new service that uses Uber drivers’ own vehicles (*see id.* ¶ 11).

To ensure there are enough drivers on the road to meet demand, Uber “uses a variety of methods[.]” (*See id.* ¶ 62.) For example, Uber “regularly informs drivers as to where demand is or is likely to become high” and modifies rates through “‘surge pricing’ to give drivers the incentive to work during times and places of heavy demand.” (*Id.*) In addition, to increase efficiency, Uber uses an algorithm for matching drivers and riders that allows drivers to have “the next ride lined up even as one passenger is being dropped off.” (*Id.*) Thus, even though drivers “determine when and where they work,” Uber influences drivers’ schedules through its policies and practices. (*See id.*)

Beyond managing supply and demand, Uber also prescribes the types of vehicles that its drivers may use. (*Id.* ¶ 64.) While each driver is responsible for obtaining his

own vehicle, Uber imposes certain criteria regarding which vehicles can be used for which services. (*See id.*) For instance, drivers participating in UberX “must use a ‘4-door car or minivan’ that is in good condition, seats at least four passengers in addition to the driver, and has a model year of 2007 or later.” (*Id.* ¶ 65.) Uber also circulates a list of recommended vehicles for UberX and helps drivers who do not already own such vehicles to lease or rent them through “special programs” with its subsidiary, Xchange Leasing, LLC. (*See id.* ¶¶ 65, 67–68.) Similarly, Uber offers discounted rentals through partnerships with local rental car companies. (*See id.* ¶ 72.)

B. ERC’s Allegations Concerning Uber’s Services For Persons Who Use Wheelchairs

At the time that ERC filed its first complaint in this action in June of 2017, Uber provided only TAXI WAV for wheelchair users, meaning that the company had no wheelchair accessible vehicles in its own 30,000-vehicle fleet. (*See id.* ¶ 29.) As indicated above, Uber now offers UberWAV—a service involving drivers who own and use wheelchair accessible vehicles—as well. (*See id.* ¶ 53.) However, ERC alleges that it has conducted an investigation into Uber’s wheelchair accessible services, and that both TAXI WAV and UberWAV are “woefully inadequate” to provide full and equal enjoyment of Uber’s services. (*See id.* ¶ 11.) To demonstrate the alleged disparities, in the summer of 2016, ERC conducted four “matched pair tests” that assessed the reliability of Uber’s TAXI WAV service. (*Id.* ¶ 80.) In each test, a TAXI WAV user and an UberX user requested rides “within five minutes of one another[,]” using the same pick-up and drop-off locations, and ERC then measured the difference in the wait times and costs of each ride. (*Id.*) ERC also conducted a follow-up comparison between these two services in May of 2017 (*id.* ¶ 85), as well as a matched pair test

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.