

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

MELODY CUNNINGHAM and
FRUNWI MANCHO, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

LYFT, INC., LOGAN GREEN, and
JOHN ZIMMER,

Defendants.

Case No. 1:19-cv-11974-IT

**PLAINTIFFS' EMERGENCY MOTION
FOR A PRELIMINARY INJUNCTION**

I. INTRODUCTION

Plaintiffs Melody Cunningham and Frunwi Mancho seek an emergency preliminary injunction enjoining Defendant Lyft, Inc. (“Lyft”) from misclassifying its drivers as independent contractors when they are actually employees under Massachusetts law. Because of this misclassification, Lyft is in particular violating the Massachusetts Earned Sick Leave Law, M.G.L. c. 149 § 148C, by failing to provide the drivers with paid sick leave – which will exacerbate the global health crisis of COVID-19 (the “coronavirus”) and which requires immediate emergency redress.¹

The urgency of enforcing § 148C under the unprecedented circumstances presented by the novel coronavirus is undeniable. The Commonwealth has already declared a state of emergency due to the coronavirus², and earlier today, Governor Baker declared that a stay-at-home order will take effect in Massachusetts on Tuesday, March 24, 2020.³ As of this writing, Massachusetts has reported 777 confirmed cases of coronavirus and nine confirmed deaths.⁴ Public health institutions and executive officials across the county are ordering residents to stay home and go out only if essential.⁵ In particular, they have made clear that anyone who is feeling sick (regardless of whether they have been diagnosed with the coronavirus) should stay home and isolate themselves in order to prevent spread of the disease.⁶

¹ On March 20, 2020, the Court granted Plaintiffs’ emergency motion to file an amended complaint to add a claim for violation of M.G.L. c. 149 § 148C. Dkt. 87.

² Massachusetts Exec. Order No. 5891: Declaration of a State of Emergency to Respond to COVID-19 (March 10, 2020), available at <https://www.mass.gov/executive-orders/no-591-declaration-of-a-state-of-emergency-to-respond-to-covid-19>.

³ *Gov. Charlie Baker Issues Stay-At-Home Order*, WCVB, March 23, 2020, <https://www.wcvb.com/article/gov-charlie-baker-issues-stay-at-home-order/31898661>.

⁴ *Mass. Issues Stay-At-Home Advisory, Closes Non-Essential Businesses, As Death Toll Rises to 9*, Boston Globe (March 23, 2020), <https://www.wcvb.com/article/massachusetts-covid-19-coronavirus-update-march-22-2020/31879392>.

⁵ California, New York, and Illinois have issued state-wide shelter-in-place orders.

⁶ *What To Do if You Are Sick*, Center for Disease Control and Prevention (CDC), <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html>.

Lyft drivers, along with other “gig economy” workers, have continued to work during this crisis, as they have generally been recognized to be providing critical essential services.⁷ Yet these drivers are being denied basic workplace protections due to Lyft’s policy of misclassifying its drivers as independent contractors. Because Lyft does not classify its drivers as employees, Lyft does not even pretend to provide its drivers with paid sick leave as mandated by Massachusetts law. Thus, Lyft drivers who cannot afford to not work are being forced to continue driving *despite feeling sick* in order to earn an income and afford basic necessities. In the words of one Lyft driver, Mariah Mitchell:

I can’t self-quarantine because not working is not an option. If I don’t make enough money, I can’t feed my children for the next six weeks. I’m not stopping, fever or no fever. And that’s what most other gig workers would do too, because none of us makes enough money to save up for an emergency like this.⁸

As described in the attached declaration, Massachusetts Lyft driver Martin El Koussa continued to drive for Lyft a week while feeling sick since the outbreak of the coronavirus pandemic. He explains that during that week, he “experienced body aches, a cough, and a sore throat” that may “be symptoms of coronavirus”; despite being instructed by his doctor to not even come into the doctor’s office (in order to avoid infecting other patients), he explains that without paid sick leave, “I felt that I had no choice but to keep driving because I do not have any other way to make money.” Declaration of Martin El Koussa (**Exhibit 1**) (El Koussa Decl.) ¶¶

⁷ Rideshare drivers, such as Lyft drivers, have been exempted from the Massachusetts stay-at-home order, as Gov. Baker has indicated that “transportation” services are “essential” and will continue operating. Jaclyn Reiss, *A List of What Can Stay Open in Massachusetts*, The Boston Globe, March 23, 2020, <https://www.bostonglobe.com/2020/03/23/metro/list-what-can-stay-open-during-bakers-stay-at-home-advisory/>. Gig economy workers have generally been excluded from other states’ shelter-in-place orders. See, e.g., Megan Rose Dickey, *San Francisco’s Shelter-In-Place Order Does Not Apply to Gig Workers*, TechCrunch, March 16, 2020, <https://techcrunch.com/2020/03/16/sf-shelter-in-place-gig-workers/>.

⁸ Mariah Mitchell, *I Deliver Your Food, Don’t I Deserve Basic Protections*, N.Y. Times, March 17, 2020, <https://www.nytimes.com/2020/03/17/opinion/coronavirus-food-delivery-workers.html?referringSource=articleShare>. See also Matthew Foresta, *Uber Is My Primary Source of Income. Each Time I Drive, I Risk Contracting Coronavirus*, USA Today, March 19, 2020, <https://www.usatoday.com/story/opinion/voices/2020/03/19/uber-my-primary-income-each-time-drive-risk-contracting-covid-19-column/2866159001/> (“Driving is frequently my primary source of income. During those times, there is no way I can pay for essentials without putting my health, and the health of my riders, at risk.”).

4, 8.⁹

Similarly, Massachusetts Lyft driver Vladimir Leodonis attests that he continued to drive for Lyft over the last few weeks, despite feeling so sick with coronavirus symptoms that he went to the emergency room (where he was denied a coronavirus test because he was only exhibiting some, and not all, the COVID-19 symptoms); Leodonis explains that he continued to drive for Lyft while sick because driving is his sole source of income and Lyft does not provide state-mandated paid sick leave that would have enabled him to afford to stop working. Declaration of Vladimir Leodonis (Leodonis Decl.) (**Exhibit 2**) ¶¶ 3-6, 8-9.¹⁰

As these declarations demonstrate, Lyft drivers may drive many passengers each day, including those who have been ordered to self-quarantine or who are coming from high-risk locations – and drivers and passengers are clearly not able to maintain the six-foot distance recommended by experts to prevent the rapid spread of the coronavirus. Lyft’s misclassification policy is now, indisputably, endangering Lyft drivers, Lyft passengers, and the general public.

In short, Lyft drivers are facing an immediate threat of irreparable harm – contracting and infecting passengers with the coronavirus and contributing to the spread of the disease to the general public – due to Lyft denying its drivers state-mandated paid sick leave.¹¹

⁹ Further, as he attests, driving for Lyft put him in a vulnerable position to contract the coronavirus, as his job requires him to “frequently pick up riders at the airport” and other high risk locations – including from the Biogen conference that recorded a high number of confirmed coronavirus infections – that he felt he could not decline without risking deactivation. *Id.* ¶¶ 5-6.

¹⁰ Leodonis (like El Koussa) suspects he was infected with the coronavirus from Lyft passengers, specifically from picking up a passenger from the Biogen conference or from other high risk locations (such as the airport or University of Massachusetts – Boston, where a student had a confirmed case of COVID-19). *Id.* ¶ 6. While Leodonis felt a social responsibility to stop driving in order to prevent the spread of the virus, he was simply unable to stop driving due to financial straits created by Lyft’s lack of state-mandated paid sick leave (just as he was similarly unable to be selective about his passengers because he was afraid Lyft would deactivate his account if he rejected too many rides). *Id.* ¶¶ 6-10.

¹¹ In recognition of the threat to public health as a result of employers denying paid sick leave during this pandemic, last week Congress passed emergency federal legislation to provide paid sick leave to some employees. *See* Emergency Paid Sick Leave Act, H.R. 6201 – 2, 116th Congress § 5101 (2020). However, the federal Act will not cover Lyft drivers if they are not

This Court should adjudicate this emergency motion forthwith and grant the motion for a preliminary injunction. On Friday, March 20, 2020, the Court denied Plaintiffs' earlier motion for preliminary injunction. Dkt. 88. Plaintiffs describe below why the instant motion should nevertheless be granted. First, Plaintiffs note that M.G.L. c. 149 § 150 permits them to seek injunctive relief on behalf of themselves and all others similarly situated – regardless of whether the injunction they seek qualifies as “public injunctive relief”.¹² Second, Plaintiffs have met the standard for a preliminary injunction to issue pursuant to Fed. R. Civ. P. Rule 65. Indeed, the emergency presented by the current crisis creates much more stark grounds for an immediate order than were presented in Plaintiffs' prior request for preliminary injunction.

First, as Plaintiffs have previously briefed (and reincorporate here by reference), see Dkt. 4 at 12-16, Plaintiffs can easily show a likelihood of success on the merits of their misclassification claim, as Lyft will be unable to carry its burden under Prong B of the conjunctive, three-pronged “ABC” test that Massachusetts requires alleged employers to prove in order to justify independent contractor status for their workers. See M.G.L. c. 149 §

recognized as employees and because of the exemption for large employers. Liss-Riordan Decl. ¶ 2, 13. The state of emergency that led Congress to take this historic action only further confirms the need for immediate enforcement of any state law protections already in place.

¹² The reason that Plaintiffs tried to explain in their earlier motion filed in September 2019, Dkt. 4, that the requested injunction qualified as public injunctive relief was so that they could obtain the injunction from this Court, notwithstanding Lyft's arbitration clause. See id. at 14-15. However, this Court has already determined that it would address Plaintiffs' Motion for Preliminary Injunction *prior to* addressing Lyft's motion to compel arbitration. See Dkt. 88 at 2 (stating that “the court still retains the power to grant interim relief, if otherwise justified, for the interval needed to resort to the arbitrator.”) (citing Next Step Med. Co. v. Johnson & Johnson Int'l., 619 F3d 67, 70 (1st Cir. 2010)); Tr. Hr'ing, March 16, 2020, at 17-19, 23. Thus, based on its conclusion that Plaintiffs' motion for preliminary injunction should be decided before Lyft's motion to compel arbitration, the Court need not even concern itself at this juncture with the question of whether Plaintiffs' request qualifies as public injunctive relief (and whether Massachusetts law would recognize this same exception to arbitration as California law). However, Plaintiffs reincorporate their argument from their previous motion for preliminary injunction, see Dkt. 4 at 14-16 (and set forth the argument briefly below as well) that their request for this injunction cannot be limited by Lyft's arbitration clause, in order to preserve this argument in the event that the Court of Appeals determines that Lyft's motion to compel arbitration would need to be considered before Plaintiffs' request for preliminary injunction.

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