

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
MD ISLAM, DOH OUATTARA, ABDUL RUMON,
HARNEK SINGH, and NEW YORK TAXI
WORKERS ALLIANCE,

Plaintiffs,

Civil Action No. 20-cv-2328

-Against-

COMPLAINT

ANDREW CUOMO, GOVERNOR OF THE STATE
OF NEW YORK, THE NEW YORK STATE
DEPARTMENT OF LABOR, and ROBERTA
REARDON, as COMMISSIONER OF LABOR,

Defendants.

-----X

PRELIMINARY STATEMENT

1. Plaintiffs bring this case to challenge the New York State Department of Labor's (DOL) failure to provide unemployment insurance ("UI") benefits to Plaintiffs MD Islam, Doh Ouattara, a/k/a Seydou Ouattara, Abdul Rumon, and Harnek Singh ("Individual Plaintiffs") and all former drivers for Uber, Lyft, and other app-based For-Hire Vehicle ("FHV") service employers in a timely manner, as the DOL does for employees of other companies determined to be employers by New York State.

2. The DOL's failure to do so in the midst of the COVID-19 pandemic, when the difference between receiving UI benefits in two weeks rather than two months can determine whether an unemployed New Yorker can put food on the table, is devastating to thousands of drivers and their families, the overwhelming majority of whom are immigrants.

3. The DOL's inaction flies in the face of settled law. In 2018, the New York State Unemployment Insurance Appeal Board ("UIAB") determined three Uber drivers and "any other individuals similarly employed as a driver" to be employees under the UI law. Unemployment Insurance Appeal Board Nos. 596722-596727 (Jul. 12, 2018) ("The Uber UIAB Decision"), attached as Appendix A.¹ In spite of these final determinations, the DOL has made no changes to the way it processes app-based drivers' applications for UI benefits. The DOL has continued to treat app-based drivers' applications for benefits as though they are independent contractors, placing the burden on drivers to prove their earnings and employment status. As the DOL has not required app-based car service companies to supply their earnings data, drivers' benefit rates cannot be determined, delaying the delivery of benefits to drivers by months.

4. Despite the finality of the UIAB Uber decision, and the breadth of the New York Court of Appeals' recent decision in *Matter of Vega (Postmates)*, 2020 NY Slip Op 02094, 2020 N.Y. LEXIS 655 (Mar. 26, 2020), finding app-based workers with similar working arrangements as app-based drivers to be employees, the DOL has failed to require app-based companies to provide wage data, as state law empowers it to do, and is failing to timely process the UI applications of app-based drivers who have submitted their earnings data as requested. The DOL has even returned findings of \$0 in wages earned in employment when drivers did fax in

¹ Typically, decisions of the UIAB are available online at the UIAB's website at <https://uiappeals.ny.gov/searchdecisions>. While Appeal Board Nos. 596722-596727 were once posted there, they have since curiously disappeared from public view, in apparent violation of New York Administrative Procedure Act § 307(3)(a). *See id.* (Date last accessed: May 25, 2020).

earnings data as requested by the DOL. The DOL is thus ignoring its own precedent and that of the state's highest court. These failures delay the process for delivering benefits to drivers, often by up to eight weeks or more, for no discernible reason.² Moreover, in this unprecedented crisis of unemployment, Defendant DOL's actions are sentencing drivers to a prolonged period without income to support themselves and their families during the chaos and instability caused by COVID-19.

5. Defendants' actions deny Individual Plaintiffs the right to UI benefits in violation of Title III of the Social Security Act of 1935, 42 U.S.C. §§501-504, and the United States Constitution. Plaintiffs seek an order prohibiting Defendants from misclassifying app-based drivers as independent contractors and issuing incorrect \$0 MBDs to all app-based drivers, in defiance of settled precedent; enjoining Defendants to immediately pay benefits to Individual Plaintiffs and all app-based drivers in compliance with these statutes and in accordance with UIAB and New York State precedent; enjoining Defendants to begin requiring Uber, Lyft and other app-based FHV employers to provide driver earnings data to New York State; and declaring that Defendants' actions in failing to pay UI benefits to Individual Plaintiffs and all app-based FHV driver claimants in New York State, in accordance with settled precedent,

² Plaintiffs note that the history of New York Uber drivers' ability to obtain benefits has been marked by a lack of transparency and disregard for the UI law. Notably, in 2015-16, the DOL took no action on any Uber driver UI claims at all for an extended period. When claimant Levon Aleksanian, wrote the DOL to ask why, after months of waiting, his claim had not been processed, DOL staff wrote back to him, informing him that, "All Uber claims we have are under Executive review," and that this meant that "the Dept of Labor is not making the decision whether or not this employment is covered." After 10 months of waiting, Mr. Aleksanian filed a federal lawsuit against Governor Cuomo and the DOL, and his claim was immediately processed. *See, Aleksanian et al v. Cuomo et al*, 16-cv-04183 (ILG) (E.D.N.Y), Dkt. #1.

violate Title III of the Social Security Act of 1935, 42 U.S.C. §§ 501-504 and the Equal Protection Clause of the 14th Amendment to the U.S. Constitution.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331.

7. Venue is proper in the Eastern District of New York pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving rise to the claims herein occurred in this district and the Defendants perform their official duties in this district.

8. Plaintiff MD ISLAM resides in Astoria, Queens County, New York.

9. Plaintiff DOH OUATTARA resides in Bronx County, New York.

10. Plaintiff ABDUL RUMON resides in Bronx County, New York.

11. Plaintiff HARNEK SINGH resides in Westbury, Nassau County, New York.

12. Plaintiff NEW YORK TAXI WORKERS ALLIANCE (“NYTWA”) is a not-for-profit membership organization with offices located at 31-10 37th Avenue, Suite 300, Long Island City, NY 11101.

13. Defendant ANDREW CUOMO is the Governor of the State of New York.

14. Defendant NEW YORK STATE DEPARTMENT OF LABOR (DOL) is a department of the State of New York existing pursuant to Chapter 31 of the laws of the State of New York. Counsel’s office for DOL is located at the Harriman State Office Campus, Building 12, Room 509, Albany, NY 12240. The DOL maintains offices throughout New York City, including in Brooklyn and Queens.

15. Defendant ROBERTA REARDON is the Commissioner of Labor for the State of New York.

STATUTORY AND REGULATORY SCHEME

“When Due” Clause

16. Title III of the Social Security Act of 1935, 42 U.S.C. §§501-504, provides payments to the states to finance the administration of their unemployment compensation laws. A state is eligible to receive payments only after the Secretary of Labor certifies that its laws meet certain federal requirements, including that:

the law of such State, approved by the Secretary of Labor under the Federal Unemployment Tax Act [26 U.S.C.A. § 3301 et seq.], includes provision for--
(1) Such methods of administration... as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation *when due*....

42 U.S.C. § 503(a)(1) (emphasis added).

17. This section of the Social Security Act is otherwise known as the “when due” provision. The federal regulation interpreting the “when due” provision requires that state unemployment compensation laws provide for “such methods of administration as will reasonably insure the full payment of unemployment benefits to eligible claimants with the greatest promptness that is administratively feasible.” 20 C.F.R. § 640.3(a).

United States Constitution

18. Under the Fourteenth Amendment, Section 1 of the Constitution of the United States, no state shall deny to any person within its jurisdiction the equal protection of the laws.

Section 1983

19. Section 1983 establishes a private cause of action against any person who acts under color of state law to deprive individuals of “any rights, privileges, or immunities secured by the Constitution and laws” of the United States. 42 U.S.C. § 1983.

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.