

Should New Jersey's Uber Drivers Receive Workers' Compensation Coverage?

April 4, 2017 | by Thomas F. Dorn, Jr

Uber is one of several mobile phone-based transportation companies that advertise for and entice drivers with a promise that they can make additional cash in their spare time. Uber advertises that if you have a car, automobile insurance, a driver's license and a clean driving record, you can meet Uber's requirements to drive in New Jersey. You can then be hired to pick up and drive customers to various locations.

Uber, however, does not provide its drivers workers' compensation insurance. Is this fair? Should drivers receive workers' compensation benefits from Uber? How would New Jersey courts answer this question?

Regardless of fault, workers' compensation provides employees with many benefits, including payment of medical bills, lost wages and permanent disability benefits if the employee's injuries are permanent. By way of example, if an Uber driver named Joe sustains significant injuries if he were attacked by a customer or if he accidentally rear-ends another vehicle while driving, Joe might need significant medical treatment and could be unable to work for a lengthy period. If Uber provided workers' compensation insurance to Joe, then his medical treatment would be authorized and paid for, and he could receive temporary disability (lost wages) if he were unable to work while receiving medical treatment. Also, he could receive a settlement of permanent disability benefits in workers' compensation court if he has permanent injuries.

Without workers' compensation benefits, Joe would have to seek medical treatment through his automobile insurance company and then try to obtain temporary disability benefits from his insurer or from the State of New Jersey. Furthermore, Joe would most likely be unable to receive a settlement for his injuries in either of the above examples. In example one, there would be no insurance from which to collect a settlement on behalf of the individual attacker. In example two, because Joe was at fault in

the accident, he would not be successful in a negligence lawsuit in New Jersey Superior Court.

Because workers' compensation insurance companies provide benefits only to employees, the question is whether Uber drivers in New Jersey are considered employees or independent contractors who would need their own workers' compensation insurance in order to obtain benefits. New Jersey courts have addressed the issue of employee versus independent contractor. To make this determination, there is a 12-part test that takes into consideration:

1. The employer's right to control the means and manner of the worker's performance
2. The kind of occupation—supervised or unsupervised
3. Skill
4. Who furnishes the equipment and workplace
5. The length of time in which the individual has worked for the company
6. The method of payment
7. The manner of termination of the work relationship
8. Whether an annual leave is provided
9. Whether the work is an integral part of the business of the "employer"
10. Whether the worker accrues retirement benefits
11. Whether the "employer" pays Social Security taxes
12. The intention of the parties

Based upon a 2015 legal decision, New Jersey courts would most likely find that Uber drivers are independent contractors. Specifically, in 2015 the New Jersey Appellate Division was asked to consider whether a limousine driver for a company was an employee. Although the driver had worked for the company for 23 years, the court determined that the driver was an independent contractor by considering the 12 factors. Despite the fact that the driver had to dress a certain way and had to drive a certain type of vehicle, the driver was left on his own as he was able to work whenever he wanted or not at all. Therefore, he could not be terminated by his company. The company located the passengers for him but exercised no control over how he drove the passengers. The driver supplied his own vehicle and vehicle insurance. The company gave him a computer for his vehicle. The driver was paid a percentage of the fare to transport the passengers, but the company did not deduct taxes from his wages.

Based upon the court's reasoning in this 2015 legal decision, New Jersey courts would most likely find that Uber drivers are independent contractors and not employees of Uber. Similar to limousine drivers, Uber drivers make their own schedules, decide how to drive their passengers and supply their own vehicle and automobile insurance. Furthermore, no taxes are taken from their wages.

In some states, however, class action lawsuits have been filed claiming that Uber drivers are employees and not independent contractors. The reasoning behind these lawsuits is that on-demand jobs, such as those performed by Uber drivers, are dangerous. To avoid having to be responsible for their drivers' safety and having to pay for workers' compensation, Uber classifies their workers as independent contractors. The lawsuits contend that Uber drivers are employees who are subject to various levels of control by Uber, and that lack of workers' compensation insurance places a burden on the drivers and their families.

At least one state has sought to tackle the question of employed versus independent drivers. In New York State, a law known as the Black Car Fund has been in effect since 2000. Under this law, certain "black car" and limousine companies are members of the Black Car Fund. The fund is considered the employer and provides workers' compensation benefits to its member drivers.

Whether New Jersey will push for legislation to create a fund that requires Uber to provide its drivers with workers' compensation benefits remains to be seen. As the law stands now, Uber drivers in New Jersey are without workers' compensation benefits.