

Current law offers no middle ground between employees and contractors

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A U.S. District Court ruling last week that granted Uber drivers class action status is no surprise in light of current law, which designates workers as either contractors or employees without acknowledging any ambiguity, observers say.

Drivers for San Francisco-based Uber Technologies Inc. had filed suit in U.S. District Court in San Francisco seeking class action status in litigation contending they should be considered employees rather than contractors, and thus entitled to expense reimbursements and the entire amount of any tips they received. Plaintiffs said the potential class included some 160,000 members. In his ruling, U.S. District Court Judge Edward Chen granted class action status (/article/20150902/NEWS06/150909953) to drivers who had been employed by Uber since Aug. 16, 2009, and met several other requirements, including that they had signed up to drive directly with Uber or an Uber subsidiary under their individual names. The ruling was “somewhat expected,” said Douglas Hass, an associate with law firm DLA Piper in Chicago. “We’ve got a very binary system here in the United States, where you’re either an employee or you’re not an employee. There’s no in between,” unlike in Europe, where intermediate levels are legally recognized. “California law in particular is very strict, so it’s not entirely unexpected this class would be certified,” Mr. Hass said. “I can’t say I’m surprised” in light of other rulings on this issue, said Drew E. Pomerance, a partner at Roxborough, Pomerance, Nye & Adreani L.L.P. in Woodland Hills, California. “I think courts are going to do everything they can to protect workers and in close calls find them to be employees and not independent contractors.” Although there are many types of arrangements, “you fall into a black or white category” of being either a worker or an independent contractor, he said. There are some instances where there is little apparent difference between situations, but people are put in one or the other category “because of one factor or another,” Mr. Pomerance said. Mr. Hass said it “remains to be seen” how big the class will be, “and how many people would actually want to be part of this class,” given that some workers prefer to be classified as independent contractors. He also said that a trial in the case would not begin until next year, and the case may be settled beforehand.



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The headquarters of Uber in San Francisco.