

# CAVALLUZZO

## **What is the Class Action about?**

The class action alleges that Uber's practice for characterizing those who work as drivers and delivery persons as "independent contractors" is wrong. Under Ontario's employment laws, people who are actually "employees" under the law cannot be called "contractors" and then deprived of the kinds of basic benefits employees are given like minimum wage and overtime.

If the Court agrees, this could mean that Uber will be ordered to pay compensation to many of the people who have worked for Uber and UberEats over the last number of years.

If you would like us to contact you with updates about the class action, please email us at [contactus@cavalluzzo.com](mailto:contactus@cavalluzzo.com).

## **How does a Class Action Work? What happens next?**

There are several legal steps that take place in a class action after a Claim has been filed. Broadly speaking, there are three stages: (1) Certification of the Class Action by the Court; (2) a common issues trial; and (3) individual issues trial.

### **Stage 1:**

At Stage 1, the Court will be asked to "certify" the Claim as a class action. What this means is that David Heller, the Plaintiff in the class action, will ask the Court to allow him to represent the "Class". It is up to the Court to "certify" that he can do that. To certify a Claim as a class action, the Court must be satisfied that the Plaintiff can properly represent the Class' interests, that the issues raised are ones that can be resolved for the entire Class in one case, and that there is no better procedure each individual could take to advance their claims. If the Court certifies the class action, the class action moves on to Stage 2.

### **Stage 2:**

At Stage 2, there is a trial of what are called the "common issues". Common issues are issues that are common to everyone in the Class that the Court will hear evidence on and resolve positively or negatively for the whole Class. One common issue may simply be "are the Class members employees of Uber". The Court could answer this question once and for all for everyone in the Class and, if the answer is yes, the Class may be entitled to compensation and other remedies. If we are successful with the common issues at Stage 2, the class action moves on to the final stage, Stage 3.

### **Stage 3:**

At Stage 3, a process is set up to resolve "individual issues". This process would involve each Class Member providing some evidence of their own individual situation so that they can obtain compensation and/or another remedy specific to them. For example, one of the arguments raised by the class action is that members of the Class worked overtime

and should have been paid for overtime hours worked. After Stages 1 and 2, the Court may order Uber to pay overtime generally. At Stage 3, the individual Class Members may then need to show how much overtime they worked so that a precise overtime amount can be ordered for them.

### **Am I a Class Member?**

To benefit from the class action, you must be a Class Member. The Claim defines Class Members as:

Any person, since 2012, who worked or continues to work for Uber in Ontario as a Partner and/or independent contractor, providing any of the services outlined in Paragraph 4 of the Statement of Claim pursuant to a Partner and/or independent contractor agreement.

The services outlined in Paragraph 4 are as follows:

1. Uber EATS drivers and delivery persons;
2. Uber X, Uber XL, Uber Select, Uber Black, Uber Taxi, Uber Access drivers;

### **I signed a contract saying that I am a Corporation/Independent Contractor. Am I a Class Member?**

You may be a Class Member. The fact that you signed a contract that says you are a corporation, or independent contractor, does not mean that you are not a Class Member and does not by itself mean that you are not entitled to the employment standards minimums set out in the Employment Standards Act, 2000.

### **Will the Class Action affect my taxes?**

We cannot guarantee what the Canada Revenue Agency will do about this, but we can offer a few comments. First, it is important to stress that the Uber class action is not about tax status. The class action was filed with the Ontario Superior Court of Justice and concerns minimum employment standards. It does not ask for class members to be recognized as employees under federal law for income tax, EI and CPP purposes. There are very different "legal tests" for who is an employee under provincial employment law and who is an employee under federal tax law. These tests appear similar but have been interpreted very differently, which means that you can be an employee for employment law purposes but an independent contractor for tax purposes. We do not know what will happen in this case.

The Claim seeks an order directing Uber to pay for any tax liability that results from its misclassification of drivers/delivery persons as employees. We don't know yet whether we will be successful.

### **Do I have to "sign up" to be a Class Member?**

No. You do not have to sign up to be a Class Member. If the class action is certified, you are automatically a Class Member if you meet the definition. If you meet the definition, you are automatically represented by David Heller in relation to the issues raised in the class action. If and when this class action is certified, the Court will give you and all Class Members the right to "opt out" of the class action if you do not want to be involved. For example, you may prefer to file your own individual Claim against Uber.

### **Will Uber find out that I have been in touch with Cavalluzzo LLP?**

We do not tell Uber which specific individuals we think are Class Members, and we never share any information with Uber about who has contacted us.

### **Do I have to pay anything to be involved?**

No. Our firm has come to an agreement to work on this matter on what is called a "contingency" basis. Our firm will only ever be paid a fee if we are successful in recovering monies from Uber. In the event Uber is successful, they may claim "costs", which is an amount to pay for their lawyers. You will not be responsible for those costs if that happens.

### **How long is this going to take?**

Class actions can take some time. We will first need to hear from Uber who will advise us if they are going to defend the class action. Following that, it typically takes about a year to complete the certification phase of the class action. There are many factors that could make the process move more quickly or more slowly, and it is therefore difficult to predict how long the process will take.

### **Who are the lawyers involved?**

Cavalluzzo LLP is co-counsel in this case with Samfiru Tumarkin LLP. Cavalluzzo represents employees and unions. We have worked on leading labour, employment, and class action law matters, including class actions that seek to advance the rights of employees.

The Cavalluzzo lawyers working on this matter are Michael Wright and Danielle Stampley. You are welcome to read their profiles by clicking on the "Lawyers" tab at [www.cavalluzzo.com](http://www.cavalluzzo.com).

The Samfiru Tumarkin lawyers working on this matter are Lior Samfiru and Stephen Gillman. You can read about them and their law practice at [www.stlawyers.ca](http://www.stlawyers.ca).

### **What more can I do?**

There are several things you can do:

1. If you have any documents concerning your work at Uber (contracts, production schedules, call sheets, emails, policies, guides, etc.), we strongly encourage you to keep them. They may be very important to you and to the class action generally;
2. If you know somebody who used to work at Uber, we strongly encourage you to send them a link to our web site's class action page;
3. If you know any drivers or delivery persons who work for Uber in Quebec, please have them contact our firm as soon as possible;
4. If you are approached by Uber to enter a new Agreement or Contract, DO NOT SIGN ANYTHING and contact our office as soon as possible to discuss how to proceed;
5. Check your email for more updates from us on the class action;
6. If your address or contact details change, please contact us with your new contact details so we can keep in touch.

Thank you again for your interest in the Uber Class Action. If you have further questions, reach out to us at [contactus@cavalluzzo.com](mailto:contactus@cavalluzzo.com).