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Uber and Lyft Drivers Bring Class Action against Companies' Terminating Services in Austin

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Drivers for Uber Technologies Inc. and Lyft Inc. filed two proposed class actions in California on June 9, 2016, after the companies suddenly removed their services from Austin, Texas following new regulations.

The two lawsuits stemming from a public referendum, known as Proposition 1, which took place May 9 in Austin, which asked voters whether the city should require Uber and Lyft to conduct fingerprint-based background checks on its drivers. Uber and Lyft spent approximately $8 million on a campaign to fight the ordinance, setting up a political action committee called Ridesharing Works for Austin. The group argued that the background checks were burdensome and inconsistent with their ridesharing business plan. After being defeated, Uber and Lyft pulled their services out of Austin. Since beginning its operations in Austin in October 2014, Uber and Lyft have contracted with approximately 10,000 drivers in the city.

Todd Johnston, a driver for Uber, and David Thornton, a driver for Lyft, filed their respective lawsuits in California, where the companies are based. The suits allege that the failure to give notice prior to shutting down operations violated the federal Worker Adjustment and Retraining Notification Act ("WARN"). Absent "unforeseeable business circumstances," WARN requires that employers provide at least sixty days' notification to employees of "plant closings" or "mass layoffs." If found liable under the statute, companies are required to pay the employees wages and benefits for the sixty-day period.

The lawsuits, which are nearly identical, claim that pulling out of Austin constitutes a "mass layoff" within the terms of the statute and that the drivers are employees, not independent contractors as the companies continuously claim. Moreover, the drivers allege that they have been unable to regain the income lost as a result of the companies' actions.

This is not the only time that Uber and Lyft drivers have claimed that they qualify as employees as opposed to independent contractors. For example, the New York Taxi Workers Alliance, on behalf of Uber drivers in New York City, filed a lawsuit just last week accusing the company of misclassifying the drivers as independent contractors. If they were recognized as employees, however, the drivers would be eligible to receive a minimum wage, overtime pay, and reimbursements for certain business expenses. Without such benefits, Uber and Lyft drivers are forced to pay out of pocket for car payments, maintenance, and other charges.

As these on-demand services continue to prosper, ride-sharing companies must review relevant federal, state and local law in order to ensure compliance. Moreover, the debate over labor practices underlying the ride-

sharing companies is far from over. Ride-sharing companies must keep a close eye on the course of this nation-wide litigation, as it has the potential to have far-reaching and industry-wide financial effects.

If you have any questions or concerns regarding employment related issues, please contact Jennifer A. McLaughlin at jmclaughlin@cullenanddykman.com *or at 516-357-3713.*

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