Gig Employer Hit with Background Check Class Action

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Uber Technologies, Inc. has been sued in a class action lawsuit alleging the company's use of criminal background checks discriminates against Black and Latinx drivers. The complaint, filed in the U.S. District Court for the Southern District of New York on April 8, challenges Uber's "unlawful use of criminal history to discriminate against its drivers in New York City as well as its brazen noncompliance with human rights and fair credit laws."

Named plaintiff Job Golightly, a Black resident of Bronx County, New York, drove for Uber from 2014 through August 2020. Golightly claims that his criminal history consists of a single 2013 misdemeanor speeding violation from Virginia. According to the lawsuit, until 2017 Uber had relied solely on background checks conducted by the New York City Taxi and Limousine Commission (TLC). Plaintiffs allege that in mid-2017, in response to negative news coverage on assaults committed by drivers, Uber began using the credit reporting agency Checkr to conduct additional background checks on current and prospective drivers. As a result, in August 2020 Uber allegedly conducted a background check on Golightly that revealed his 2013 speeding violation. One day later, Golightly claims that Uber deactivated him from its platform, preventing him from driving for the company.

Golightly brings four claims against Uber for per se and disparate impact violations of the New York City Human Rights Law (NYCHRL) and for violations of the federal Fair Credit Reporting Act (FCRA) and New York's "mini-FCRA."

NYCHRL requires employers to evaluate employees' and applicants' criminal history on an individualized basis, to provide required documents and disclosures, and to wait for a period during which the job is kept open for the applicant or employee to respond to the employer's concerns about any criminal history. NYCHRL was amended in November 2019 to include independent contractors as protected workers, effective January 11, 2020. The lawsuit alleges Uber failed to provide any of NYCHRL's protections to its drivers and prospective drivers.

FCRA and its state equivalents impose requirements on employers using consumer reports for employment purposes, including providing notice to individuals before taking adverse action based on a consumer report. NY FCRA specifically requires an employer to provide a copy of Article 23-A of the New York Correction Law. The lawsuit alleges Uber failed to comply with these requirements.

According to Golightly, there are approximately 80,000 total potential class members in two classes. The "criminal history discrimination and notice class" includes all individuals who, since January 11, 2020, have been denied the opportunity to drive for Uber based on criminal history contained in consumer reports obtained by Checkr and who did not receive the required notices and documents. The "disparate impact class" includes all Black and Latinx individuals who, since January 11, 2020, have had their consumer reports used by Uber and who were then denied the opportunity to drive for Uber based on criminal history.

Plaintiffs are represented by Mobilization for Justice, a non-profit legal services organization based in New York City, and Towards Justice, a non-profit law firm that focuses on economic justice. The lawsuit is the first of its kind, seeking to enforce the NYCHRL against a "labor platform company in New York City," according to a joint press release by the organizations.

This case will be closely watched as one of the first class action lawsuits brought on behalf of independent contractors since the NYCHRL's amendment became effective on January 11, 2020. Employers and gig economy companies alike should evaluate their background check policies and practices with the help of legal counsel to ensure they are compliant with current law in any jurisdictions where they operate.

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