Massachusetts High Court Says Grubhub Delivery Drivers Must Arbitrate Claims

Insights
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The Massachusetts Supreme Judicial Court (SJC) held today that local Grubhub delivery drivers are not exempt from the Federal Arbitration Act (FAA), and those workers can be compelled to individually arbitrate their claims against the delivery app. The SJC's decision in *Archer v. Grubhub, Inc.* reverses an egregiously wrong trial court decision and joins a chorus of other courts that have decided this issue in favor of arbitration. What do you need to know about today's decision?

Federal Arbitration Act 101

The FAA generally allows businesses to enforce reasonably drafted agreements to arbitrate workplace claims, but the act does not apply to certain workers who are engaged in interstate commerce — for example, workers who are directly involved in transporting goods across state or international borders.

Arbitration, and especially arbitration of employment disputes, has been a frequent issue on court dockets across the country and has received outsized attention from the U.S. Supreme Court in recent years. In just the past five years, the SCOTUS has determined the following:

- Arbitration agreements containing class action waivers do not violate the NLRA;
- Interstate transportation workers are exempt from the FAA;
- Class arbitration cannot be compelled absent an express provision in the agreement;
- Cargo loaders at an airport may be exempt from the FAA; and
- A California state law designed to avoid arbitration of collective disputes is partially preempted by the FAA.

Generally speaking, the SCOTUS grants significant deference to the FAA, requiring courts to enforce arbitration agreements "rigorously" according to their terms. Any doubts over the scope of an arbitration provision generally must be resolved in favor of arbitration. The SJC's decision in today's case rests on a narrow exception to the FAA which exempts "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce."

Background

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In 2019, former Grubhub drivers who delivered takeout orders sued the delivery app claiming violations of the Massachusetts Wage Act and other state law. Grubhub moved to dismiss the case and to compel arbitration contending that each of the plaintiffs had signed an arbitration agreement that was enforceable under the FAA. In denying the motion, the trial court seemingly ignored years of SCOTUS precedent and other court rulings on the same issue and instead concluded that the Grubhub drivers fell into a narrow exemption from the FAA – that the drivers were engaged in interstate commerce – and therefore Grubhub could not compel arbitration. Unsurprisingly, Grubhub appealed.

Grubhub Prevails on Appeal

The Massachusetts SJC dispensed with the workers' exemption claim in short order, acknowledging that it was not writing on a "blank slate" and instead looked to numerous relevant decisions from the SCOTUS and other federal courts. These cases have routinely held that the "interstate commerce" exemption only applies to "transportation workers" engaged in the movement of goods in interstate commerce. The SJC also noted a federal court of appeals had already decided the exact same question in a case involving a different group of Grubhub workers. That court held that while the Grubhub workers are "transportation workers" their work delivering food from local restaurants to local consumers did not mean the workers were engaged in "interstate commerce." The SJC acknowledged every court that had considered this issue in the context of delivery drivers had reached the same conclusion, citing to numerous federal court decisions in Massachusetts and elsewhere.

What Do You Need to Know?

The SJC's decision in *Archer* confirms that the FAA's transportation worker exception is a narrow one and that most arbitration agreements should continue to be enforced. This is especially important in Massachusetts, where state law does not permit class action waivers of wage and hour claims. In other words, if these workers were exempt from the FAA, they may have been able to proceed as a class action despite the agreement to arbitrate. This should bring peace of mind to you and your business, knowing you can avoid the costs of prolonged class or collective action litigation and instead resolve employment disputes on an individual basis with your employees in arbitration. For multi-state employers, the decision is a welcome one because it does not make Massachusetts an outlier on this issue. In any event, we recommend that you routinely review employee arbitration agreements to make sure they continue to track near-constant developments in the law in this area.

We will continue to monitor further developments and provide updates on this and other labor and employment issues affecting Massachusetts employers, so make sure you are subscribed to Fisher Phillips' Insights to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney, the author of this Insight, or any attorney in our Boston office.

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