



The Ultimate Misclassification Showdown Could Be Right Around The Corner

Insights

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Gig employers returning from the Fourth of July holiday were in for a rude awakening when they learned about the fireworks that just went down in a California federal court. Right before the holiday weekend, Judge Jacqueline Scott Corley denied GrubHub's request to have a misclassification case tossed from court. She has now scheduled it for a bench trial to begin September 5. At stake: a decision from a federal judge about whether those who perform work for one of the largest on-demand companies are independent contractors or employees.

To be certain, this is not the first time a court has considered this question. Cases against Uber and Lyft are just two of those that have been filed on a misclassification theory, but none of these have been litigated to a final resolution. They have either been settled or just haven't gotten to a final trial phase yet, which means the GrubHub trial could be the first time a federal judge actually renders a final decision on this issues.

The case involves a former GrubHub driver named Raef Lawson who attempted to bring a class action lawsuit against the on-demand food delivery service, but his class action was not certified. Instead, his case has proceeded as a claim filed under California's notorious Private Attorneys General Act (PAGA). Such claims can only be filed by employees, not contractors, so the question of whether Lawson was misclassified is the prime issue that needs to be resolved before he can even proceed. If he does make it past the initial misclassification hurdle in the judge's eyes, however, he will be able to present evidence that he was shorted employee benefits such as unemployment, insurance, and reimbursed expenses.

GrubHub has pointed out to the court that Lawson's request for expenses to be reimbursed seems at odds with the fact that he delivered food for other delivery services (Postmates and Caviar) at the same time he was logged into GrubHub's portal. This highlights one of the conundrums of the gig economy system and how the 20th-century classification laws are not well-suited to resolving these debates: is Lawson really entitled to compensation for wait time spent on-call waiting for orders to deliver or for reimbursable expenses when he is signed up to deliver food for at least three separate competitors at once? If so, who pays and at what rate?

We'll have a better sense for how a court views this and other questions after the bench trial wraps up in a few months. Stay tuned for more details as the case progresses.

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