



An Appealing Update on the Grubhub Misclassification Case

Insights

3.08.18

We knew we hadn't heard the end of this case, but today it's official: the worker who lost what is believed to be the nation's first-ever gig economy misclassification trial last month has filed an appeal with the 9th Circuit Court of Appeals.

For a review of what we're talking about, read [this summary of the case and decision](#) from February 8. By way of quick background, this case involves a former GrubHub driver named Raef Lawson who claimed that he should have been classified as an employee for the online food-delivery service instead of an independent contractor. The case went to a bench trial in September, and a California federal judge decided in February that Grubhub lacked necessary control over the driver's work to be considered an employee. In California, as in most other states, the principal test of an employment relationship is whether the business has "the **right to control** the manner and means of accomplishing the result desired." Finding this did not exist, she ruled for Grubhub.

[Side note: your author was just interviewed by NPR's Yuki Noguchi on this court ruling and its implications; feel free to take a quick listen or read the story [here](#)].

The plaintiff's attorneys vowed then to appeal the decision, and made good on that promise today. Interestingly, besides appealing the finding that Lawson was an independent contractor, the attorneys are also appealing the order from July 2016 that blocked him from proceeding with his claim as a class action lawsuit.

It is very difficult to predict how the appeals court will rule. For years, the 9th Circuit was considered a very employee-friendly court, with employers losing case after case on a variety of labor and employment matters. But recent years have seen some victories for employers in the 9th, on matters such as [the test for determining internship status](#) (December 2017), [rest periods under California state law](#) (August 2017), and [the validity of Uber's arbitration agreements](#) (September 2016) just to name a few. So it's not a foregone conclusion that Lawson will find relief at the appellate court, and much will depend on the three judges randomly assigned for the panel to hear the matter.

Lawson's attorneys are no doubt hoping that the California Supreme Court will soon revise the standard for determining whether workers are contractors or employees, as the [court recently invited the parties to another case](#) to brief them on whether to loosen the standards. If that court does, indeed, make it easier for misclassification cases to proceed, you could even see the 9th Circuit send the case back down to the lower court for a re-visitation of the trial ruling.

Expect a ruling by the 9th Circuit in late 2018 or early 2019.

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