



## Gig Worker's Hopes Of Arguing Case In Court Are Dashed By Arbitration Agreement

Insights

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A delivery driver for gig economy company DoorDash has been ordered by [the 5th Circuit Court of Appeals](#) to take his misclassification case to a private arbitrator instead of court pursuant to a valid arbitration agreement he entered into. The [April 25 decision](#) is a solid win for gig employers and could provide a template for how other similar businesses should structure their own arbitration agreements.

DoorDash operates the way many gig economy companies run: it allows users in over 200 cities to use a mobile app to order food from participating restaurants. The delivery drivers, called Dashers, are classified as independent contractors. One such Dasher—Dewey Edwards—did not believe he and other Dashers were properly classified and filed a federal lawsuit in Texas against DoorDash. His claim alleged wage and hour violations, and he sought to bring such a claim on behalf of not only himself but also a class of similarly situated individuals nationwide.

DoorDash asked the court to block the conditional class certification proceedings, compel individual arbitration, and dismiss the suit. The company cited to an independent contractor agreement signed by Edwards that contained [the following arbitration clause](#):

Contractor and Company agree that final and binding arbitration will be the exclusive means of resolving any disputes between Contractor and Company. Any such disputes shall be resolved by pursuant [sic] to the commercial rules of the American Arbitration Association (AAA)... Contractor and Company agree to bring any disputes in arbitration on an individual basis only and not as a class or other collective action basis. Accordingly, there will be no right or authority for any dispute to be brought, heard or arbitrated as a class or other collective action. This class and collective action waiver shall not be severable from this Agreement in any case in which the dispute is filed as such a class or collective action and a civil court of competent jurisdiction finds that this waiver is unenforceable. In such instance, the class or collective action must be litigated in a civil court of competent jurisdiction.

The lower court sided with DoorDash and ordered Edwards's case to arbitration. He appealed to the 5th Circuit Court of Appeals, arguing that the class certification case should have been resolved before the arbitrability question. The 5th Circuit did not agree with him, issuing an 11-page opinion falling squarely on the side of DoorDash.

The court said that, in such cases, it made sense to deal with the question of arbitrability first before determining whether class certification was appropriate. As the court said, to rule otherwise “would present a justiciability issue: a court could conditionally certify a collective action solely on the basis of a claim that the plaintiff was bound to arbitrate and was therefore barred from bringing it in court in the first place.” Instead, the court maintained that arbitrability is a “threshold question” that needed to be determined at the outset of a piece of litigation. It said that such a holding would be consistent with the “national policy favoring arbitration.”

The court also said that the existence of a valid delegation clause—the portion of the written agreement sending disputes about arbitrability itself to the arbitrator—meant that it would play no role in hearing challenges to the guts of the arbitration agreement. In other words, although Edwards wanted to raise arguments about whether the agreement was conscionable, whether certain provisions contained within were enforceable, and whether the agreement was illusory, the court took a hands-off approach. “If there is an agreement to arbitrate with a delegation clause..., we will consider that clause to be valid and compel arbitration. Challenges to the arbitration agreement as a whole are to be heard by the arbitrator,” the 5th Circuit said.

As a result of this decision, gig companies should review the specific language of DoorDash’s agreement and determine whether their own agreements should be conformed to follow the guidance provided by this federal circuit court. Of course, other circuits may not be as business-friendly as the 5th Circuit, so you should consult with your own counsel (or any member of our Gig Economy Practice Group) to ensure you have maximum protection.

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