



Another Gig Economy Misclassification Win Delivered In New York, This Time For Postmates

Insights

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Sure, there have been some high-profile legal setbacks for gig economy businesses in the area of misclassification lately; the Dynamex case was a punch in the gut for California businesses, and the Pimlico Plumbers case is a massive headache for our brothers and sisters across the Atlantic. But by and large, when courts in the States are called upon to apply the standard “right to control” test in misclassification cases involving the gig economy, businesses have come out on top. And that’s exactly what happened late last week in New York as a state appellate court ruled in favor of independent contractor status for a former Postmates driver.

The facts are fairly straight-forward, as they are for most misclassification cases. Postmates operates a service that lets customers request on-demand pick-up and delivery from local restaurants and stores, and gig workers operating as independent contractors carry out the deliveries. The company takes a hands-off approach when it comes to hiring couriers; there is no application process and no interview, simply a criminal background check and an orientation session on how to utilize the app. Once hired, couriers don’t report to any supervisor, and have “unfettered discretion” as to when—or whether—to log onto the app to accept delivery requests. There is no set work schedule, no minimum time requirement, and no minimum delivery requirement. Couriers can accept, reject, or ignore any delivery request in the area where they happen to be located at the time the customer places an order. The company doesn’t dictate what mode of transportation they use, what routes they take to make deliveries, and what they wear when they work. And of course, couriers can work for any other company they want, including direct competitors—and even while logged onto the Postmates app.

Enter Luis Vega. Mr. Vega was engaged as a courier for Postmates back in 2016. The company terminated its relationship with him, however, after alleging that he received negative customer feedback and/or committed fraudulent activity. He filed a claim for unemployment compensation alleging he was misclassified as a contractor and was actually an employee. In 2016, he was granted UI benefits, and in October 2016, the New York Unemployment Insurance Appeal Board ruled in his favor: it concluded he was an employee and granted him unemployment benefits. Postmates filed an appeal.

On June 21, the New York Appellate Division reversed the decision and ruled in Postmates’ favor. It found that the evidence showed “insufficient indicia of control” by Postmates over the means by which Vega and other couriers performed their work to demonstrate that the company acted as an

which vega and other couriers performed their work to demonstrate that the company acted as an employer. The court acknowledged that there were some facts that might otherwise point to an employer-employee relationship (such as Postmates determining the fee to be charged to the customers, tracking the subject deliveries in real time, and handling customer complaints), but that these do not change the overall nature of the relationship. When examined in total, the court concluded that the balancing factors tipped in Postmates' favor.

This is obviously more good news for gig businesses. It continues a positive streak of wins that should provide a small measure of comfort for those businesses operating in jurisdictions applying the "right to control" factors. Courts have consistently examined fact patterns like the one laid out above and ruled in favor of contractors status, which should offer clues to businesses about how they should establish their own business relationships.

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