



Postmates Shows It's As Easy As 1-2-3 To Ensure Arbitration With Your Contractors

Insights

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A recent decision from a federal court in California shows that there is a simple three-step process to follow if you want to ensure that your gig workers are found to be subject to your arbitration provisions. The judge's December 17 opinion in a misclassification case against Postmates provides a classic blueprint that you might consider adopting for your own business.

The lawsuit was filed by three delivery couriers who claimed that they were incorrectly classified as contractors instead of employees. They sought recovery of their business expenses, minimum wage pay, and other amounts under California state law. In Monday's opinion from Judge Joseph Spero of the Northern District of California, the court held that the plaintiffs were subject to an arbitration provision and that they should have taken their battle to that forum and not to court. As the first matter to resolve, the judge concluded that Postmate's arbitration agreement was valid and that the plaintiffs were subject to it, despite their argument that they lacked adequate notice of the arbitration provision. There were three main things cited by the court to support this ruling:

1. First, Postmates used a "click-through process," whereby prospective couriers would be forced to click on a link taking them to the arbitration agreement while they were signing up for service with the company. The very first page where they landed then noted the existence of an arbitration provision, and the prospective couriers were encouraged to read it before continuing with the process.
2. Before they could move on with the rest of the sign-up procedure, the prospective courier would have to click either "Agree" or "Disagree" to the terms of the arbitration agreement.
3. Prospective couriers who agreed would be sent a copy of the arbitration agreement via email, and they also had the ability to access it through the Postmates app whenever they wanted.

The court explained that such a process was sufficient to establish the formation of a valid contract. The judge distinguished this clear three-step process with other actions by companies that were held to be insufficient, such as if portions of a contract were presented through hyperlinked text that recipients might not have recognized as links to the actual text of the contract, or if arbitration provisions were "buried deep within the contract."

Given the difficulty that gig companies often face in proving contractor status—especially in states like California that have adopted the ABC Test for determining classification status—it makes sense

to handle such disputes in an arbitration forum instead of court. By following Postmates' lead, you could find yourself agreeing that ensuring your cases are in arbitration could be as easy as 1-2-3.

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