Gig Businesses Get Clickwrapped Gift From Massachusetts Court Right In Time For Christmas

Insights
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On the eve of the holidays, gig businesses got a gift in the form of a ruling from a Massaschusetts federal court where a clickwrap agreement was held to be sufficient to bind a worker to an arbitration clause. The ruling in favor of Lyft will not necessarily help all businesses across the country—especially because the court specifically pointed out that his ruling might have been different had he been applying California or New York law—but it does continue the trend of holding workers to the terms of an electronic arbitration agreement.

Eric Wickberg has driven for Lyft since September 2017. He now wants to bring a lawsuit against the company alleging wage and hour violations, claiming that he was misclassified as a contractor and should have been designated as an employee. He brought his claim in federal court in Massachusetts, and Lyft moved to have his case dismissed and pushed into an arbitration forum instead. Wickberg opposed the move, and claimed there were five reasons why the arbitration agreement should be declared invalid:

- First, while acknowledging that there was a checkbox requiring him to click "I agree" to the terms and conditions of an arbitration agreement without necessarily reviewing the agreement—commonly known as a "clickwrap" agreement—he contended that the agreement was not reasonably communicated to him. He pointed out that the checkbox was three-quarters of the way down the smartphone screen that served as the initial application for work with Lyft, and that there was no contextual clue that he was entering into a binding agreement with Lyft by so clicking.
- Second, he noted that the "I agree" checkbox was directly under several empty fields asking him for his personal information (such as name and contact info) and whether he had any promotional or referral code, and that the placement of the box might have suggested that it was referring to the gathering of such information.
- Third, he argued that the terms were "buried amidst a multi-screen sign-up process."
- Fourth, he contended that the "I agree" terms were the smallest font on the page, "visually dwarfed" by other more prominent text on the page.
- Finally, he pointed out that the hyperlinked text that would have brought him to the arbitration agreement was not italicized, bolded, underlined, or in "classic blue coloring" that would have indicated that it was a hyperlink.

To bolster his argument, he cited to a California state court case from October 2018 whereby this same Lyft agreement was invalidated because the court believed that nothing on the clickwrap screen supports the conclusion that the terms of service included a contract that would govern the working relationship between the parties (*Talbot v. Lyft, Inc.*, No. 18-566392, Cal. Sup. Ct. Oct. 19, 2018). Indeed, in a blog entry I posted just yesterday, I noted a simple 1-2-3 step process employed by Postmates that was upheld by a California court on December 17 that went much further than Lyft's process in highlighting the terms and conditions of the arbitration agreement.

But Judge Richard G. Stearns dismissed the California case—and a similar New York case—as irrelevant to the proceedings, saying he found them "unpersuasive" since they do not apply Massachusetts law. Instead, he agreed with Lyft that the process conformed to the standards necessary in the 1st Circuit jurisdiction (including Massachusetts, Maine, New Hampshire, Rhode Island, and Puerto Rico) to form a "conspicuous and enforceable agreement."

He noted that Massachusetts and several other states generally enforce clickwrap agreements as reasonably communicating the terms of an underlying contract, especially because they require affirmative action on the part of the user—i.e., they must click their assent in order to proceed with the application process. He also dismissed Wickberg's concerns about the placement of the text on the page, or the color of the words, or the size of the font. He noted that the key phrase was in pink, distinguishable on the screen from the rest of the text. He said that the font need not necessarily be larger, or in capital letters, but instead simply set off from the rest of the screen such that it was distinguishable.

This case serves as a good reminder that each state approaches arbitration agreement law slightly differently, and you should consult with your legal counsel before implementing any arbitration process in your terms of service. Businesses can celebrate this holiday season with this clickwrapped gift from the federal court, but make sure your business is in compliance with your own local law or else it might not be a very happy new year.

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