



# **The See-Saw World of Uber's Arbitration Agreement Again Tips In Uber's Favor**

Insights

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Ever since Uber became part of our everyday world, the mandatory arbitration agreement it requires its independent contractor drivers to sign has been under constant scrutiny—and attack. A recent decision, however, fell in the gig economy company's favor, presenting a good lesson for all gig economy companies.

In 2016, a San Francisco federal judge struck down Uber's arbitration agreement as unenforceable, only to have the 9th Circuit Court of Appeals reverse the lower court in September 2018, finding the arbitration agreement enforceable. That decision followed closely a U.S. Supreme Court ruling, in May 2018, that mandatory arbitration agreements were generally enforceable.

In March 2018, the 6th Circuit Court of Appeals, sitting in Chicago, upheld the enforceability of the Uber agreement that required wage and overtime pay claims to be arbitrated. Three months later, in June 2018, the 1st Circuit Court of Appeals ruled the Uber agreement was not enforceable against passengers who had sued the ride-share pioneer, claiming the agreement violated state consumer protection statutes. The court ruled that because the agreement was provided to passengers on line and contained too many terms of art that were not fully explained or distinguished, the "confusion" rendered the agreement unenforceable. Then, seven months later, an appeals court in Ontario, Canada also struck down the agreement as unenforceable.

It's enough to make your head spin, isn't it? But wait...in case you are not sufficiently confused, the U.S. District Court for the Middle District of Florida, sitting in Tampa, Florida, just deemed Uber's mandatory arbitration provision enforceable as to claims for defamation and violation of due process by a driver. Phillip Gray's agreement to drive for Uber was "deactivated" after a complaint by a passenger alleging sexual harassment. Gray claimed he was provided no opportunity to answer the allegation, to deny it, or provide his version of events. He complained he did not sexually harass anyone, including the complaining passenger, and that denying him his ability to drive for Uber without an opportunity to challenge the claim or to confront his accuser violated his constitutional right to due process. He sued Uber and the passenger in federal court, alleging defamation and violation of due process. Uber moved to stay the litigation and to compel the claims to arbitration, pursuant to its written Independent Contractor Agreement with the driver. The driver opposed Uber's motion.

On February 27, U.S. District Court Judge James J. Moody, Jr. ruled only on Uber's Motion to Stay and to Compel Arbitration, adhering to a long-standing federal policy embodied in the federal Arbitration Act, Title 9 U.S.C.A. §1, et seq., which favors arbitration over litigation. Once it was clear to the court that the driver had indeed agreed to arbitration, and there were no external legal issues foreclosing arbitration, the judge held that the arbitration provision in Uber's agreement with its drivers was enforceable.

Does this mean the issue of the enforceability of Uber's arbitration agreement is settled? Not hardly. There will almost certainly continue to be contradictory rulings from courts across the country. Judge Moody's decision, and others, are also likely to be appealed, until perhaps the threshold issue of Uber's particular agreement (or one similar to it) is before the U.S. Supreme Court, for an ultimate ruling on its enforceability. Gig economy businesses should stay tuned.

### ***Related People***



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