



Grubhub Decision Put On Ice As Retroactivity Question Looms

Insights

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You've been waiting quite a long time for a critical ruling from the 9th Circuit Court of Appeals on the very fabric of the gig economy model – and you're going to have wait even longer. The appeals court just announced late last week that the *Lawson v. Grubhub* case has been put on hold while it waits to hear from the California Supreme Court on whether the new ABC test should be applied retroactively to the case, or whether the appeal would apply the older flexible misclassification test that had been in place at the time the trial took place.

By way of quick recap, Grubhub squared off with a former driver, Raef Lawson, in the nation's first-ever gig economy misclassification trial in late 2017, leading to a victory for Grubhub in February 2018. Things took a turn for the worse in April 2018 when the California Supreme Court dropped a bombshell and changed the misclassification standard with its infamous *Dynamex* decision, which ushered in the notorious ABC test. Lawson's attorneys quickly pounced and argued that he should now be declared the victor given the new standard. Lawson filed an appeal with the 9th Circuit Court of Appeals, and we've been waiting on pins and needles since then to see how things would turn out. Would the court apply the new standard, making it much harder for Grubhub to prevail? Or would it apply the same standard that had been in place when the dispute actually arose?

The parties submitted an opening appeals brief in November 2018, the response brief in January 2019, and the reply brief in March 2019. And since then: crickets. There has been a complete absence of discussion about the appeal on this blog since March, but that's not because we're falling asleep at the wheel here at the Gig Economy Blog (at least, not on **this** issue). It's because the appeals court has been silently sitting on the case since then. The September 26 order shuttering the matter temporarily has been the first real activity on the matter in six months.

What's the hold up, you ask? Back in July, the 9th Circuit decided that it didn't want to be the court that made the final ruling on whether California's ABC test law should be applied retroactively. Instead, it kicked the issue to the California Supreme Court to decide the matter in the *Vazquez v. Jan-Pro* case. And just last week, that legal maneuver was formally certified and the issue was officially handed off the state Supreme Court. Which prompted the 9th Circuit, it seems, to wash its hands of the retroactivity question in all respects, putting the *Grubhub* case on ice until the California Supreme Court weighs in, once and for all.

In a nutshell: it will be California Supreme Court that decides whether the ABC test should be applied retroactively. Once that question is answered – and who knows how long that will take – the

applied retroactively. Once that question is answered – and who knows how long that will take – the appeals court will be in a position to know which test to apply, and we’ll finally have a ruling in the *Grubhub* case. Although we don’t know how long it will be until that day, we do know that we’ll be there to cover the story on this blog. So stay tuned and hang in there.

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