



Court Uses 8-Factor Test To Hand Gig Businesses Victory In Next Round In New Prime Arbitration Battle

Insights

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A Massachusetts federal court just ruled that gig workers cannot escape arbitration provisions by claiming they are exempt transportation workers. The September 30 decision in *Austin v. DoorDash* marks the second win for gig businesses following a troubling Supreme Court ruling in January 2019 that opened the door to a possible arbitration exemption. However, there remain other federal courts that have ruled for workers on this issue, and the Massachusetts court even indicated there could have been worker victory had the fact pattern been slightly different, so companies are not out of the woods on this issue by a long shot.

Quick Background

Earlier this year, the Supreme Court ruled in *New Prime v. Oliveira* that the Federal Arbitration Act's (FAA's) exemption that excludes those with "contracts of employment of workers engaged in interstate commerce" from arbitration includes interstate transportation workers with independent contractor agreements. We immediately raised a red flag and discussed whether gig delivery and ride-sharing drivers would be considered to be operating in interstate commerce, and if so, whether courts would soon block arbitration agreements from being enforced. While an Illinois federal court rejected this argument in an April decision involving Grubhub, the 3rd Circuit Court of Appeals blocked Uber from enforcing its arbitration pact in New Jersey just last month because of the FAA exemption.

8-Factor Test Works In Businesses' Favor

Darnell Austin worked as a delivery driver for DoorDash starting in October 2016. His independent contractor agreement included an arbitration provision. In 2017, he filed a misclassification lawsuit proposing to represent over 1,000 drivers, claiming they should have been treated as employees. DoorDash asked the court to enforce the arbitration agreement, and Austin cited the Supreme Court's *New Prime* decision as a way to escape the terms of the contract he (and all other drivers) signed.

U.S. District Court Judge Indira Talwani rejected Austin's argument and upheld DoorDash's arbitration agreement. She cited to an eight-factor test to ultimately determine whether the worker should be considered a "transportation worker" under the FAA and thus exempted from arbitration provisions. "While several of these factors weigh in favor of finding Plaintiff to be a transportation worker," she said, "others weigh against that finding. Reviewing these together, the court finds that Plaintiff is not a transportation worker exempted from the FAA."

...remain is not a transportation worker, exempted from the FLMN.

The factors that actually worked in favor of the DoorDash driver being considered a “transportation worker” were:

1. **Whether the employee works in the transportation industry** (as he works as a driver);
2. **Whether the vehicle itself is vital to the commercial enterprise of the employer** (his vehicle is vital to the company’s commercial enterprise); and
3. **The nexus that exists between the employee’s job duties and the vehicle the employee uses in carrying out his duties** (there is a complete nexus between his duties as a delivery driver and the vehicle he uses in carrying out his duties).

The court then said that one factor was irrelevant to the discussion:

4. **Whether the employee supervises employees who are themselves, transportation workers, such as truck drivers** (since this factor is meant to broaden the exemption to workers who do not directly engage in transporting goods).

Also, another factor neither helps nor hurts either side:

5. **Whether, like seamen or railroad employees, the employee is within a class of employees for which special arbitration already existed when Congress enacted the FAA** (because gig workers did not exist in 1926 when the FAA was enacted)

But three factors outweighed the others and led Judge Talwani to rule in DoorDash’s favor.

6. **Whether the employee is directly responsible for transporting the goods in interstate commerce** (as Austin never alleged he crossed state lines while delivering food for DoorDash);
7. **Whether the employee handles goods that travel interstate** (the court found that there was insufficient justification for the argument that some of the food that may have been part of the prepared delivery service originated in other states); and
8. **Whether a strike by the employee would disrupt interstate commerce** (this factor was not explicitly discussed by the court, but it seems obvious that a “strike” by a gig worker isn’t a real threat, and even if a random gig delivery driver stopped working for a day – which they do frequently – it would have no impact on the nation’s interstate commerce).

Storm Clouds Remain On Horizon

As noted above, however, this decision is not cause for unbridled celebration for the gig business community. First, it springs from a lower federal court, not a more influential federal appeals court. Second, it only applies in Massachusetts. Third, there have been other cases that have ruled in a contradictory stance. Finally, the court itself noted that this decision was fact-specific and may have

been decided differently with just a few simple tweaks. “The outcome of this case may well be different if a driver alleged that he crossed state lines to deliver goods, as might occur where a delivery driver is stationed close to a state’s border,” said Judge Talwani. “Similarly, the outcome of this inquiry may also be different for an on-demand driver who delivers groceries for a store that buys goods in interstate commerce.”

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