



Gig Employer Heartburn: Challenge to GrubHub's Classification System Continues

Insights

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A putative class action case, alleging that online food delivery service GrubHub misclassified its drivers, has survived a motion to dismiss and will proceed in California federal court. Noting that GrubHub's view of the facts may ultimately prevail, U.S. Magistrate Judge Jacqueline Scott Corley said that at this stage, the drivers' pleadings gave rise to "plausible inference" that they should not have been classified as independent contractors, and thus may have impermissibly been denied minimum wage and overtime pay.

This decision reflects problems that legal and regulatory systems are having in attempting to digest realities of the modern business world. GrubHub refers to its drivers as "delivery partners" who provide their own vehicles and insurance. Like many other workers in the gig economy, the drivers can effectively set their own schedules, then secure specific delivery assignments through a mobile app. GrubHub pays drivers a flat fee for each delivery made. Drivers may also receive tips.

The plaintiffs contend that they are employees, not independent contractors. In support of this argument, they allege that they must sign up for shifts in advance, are told by GrubHub where to report for shifts, how to dress and where to pick up and await deliveries. They further allege that they are required to accept at least 75% of dispatches offered or risk termination from the delivery partner relationship.

The plaintiffs complain that they bear the cost of car expenses, gas, parking, and phone data service plans, factors that would actually weigh in favor of an independent contractor classification. They claim, however, that these arrangements with GrubHub cause their weekly pay rates to dip below California's minimum wage. They further allege that drivers are unable to perform personal non-work activities during an engaged shift. The lawsuit asserts claims under the California Labor Code and the Private Attorney General Act. They also allege unfair business practices.

In court, GrubHub's attorney argued that the company does not know how drivers spend their time and that they are indeed free to engage in personal activities between deliveries. The court observed that at this stage, however, the plaintiffs' allegations permit the lawsuit to survive dismissal.

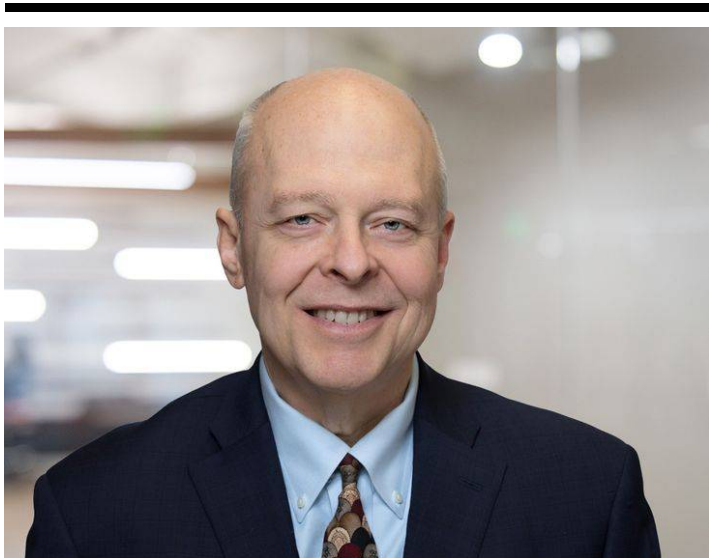
The same plaintiffs' firm handling this case has filed a similar lawsuit in Chicago, alleging that GrubHub drivers in Illinois, Oregon, Pennsylvania, New York, and Connecticut, were misclassified as

independent contractors, treated as employees and not paid required overtime or minimum wage. That firm also handled a case between Uber Technologies and its drivers in Massachusetts and California. The case resulted in a proposed \$100 million settlement, but left important legal questions about the status of those drivers unanswered.

When the complaint in this GrubHub lawsuit was initially filed in November 2015, the judge dismissed it with leave to amend. In her July 13, 2016 ruling, Judge Corley still denied class certification because one of the two named plaintiffs, Raef Lawson, does not have standing to be a class representative. Lawson opted out of an arbitration agreement that other drivers in the putative class signed. The plaintiffs' lawyer will apparently amend the complaint to add a plaintiff who did not opt out of arbitration.

Stay tuned as this process continues through the legal system. More hiccups are inevitable.

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