Victory For Grubhub In First-Ever Gig Economy Trial

THREE THINGS ALL GIG ECONOMY COMPANIES NEED TO KNOW ABOUT DECISION

Insights
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In what is believed to be the first time in our nation's history that a trial court has reached a judicial merits determination in a gig economy misclassification case, a federal judge in California ruled in favor of the company this afternoon and found that a delivery driver was properly classified as an independent contractor. By rejecting the driver's claim that he was actually an employee deserving of minimum wage, overtime, and other benefits associated with employee status, the court handed gig economy companies everywhere a groundbreaking victory.

What do all gig economy companies (and other businesses using a freelance or independent contractor model) need to know about today's historic ruling in the *Lawson v. Grubhub* trial? Here are the three key takeaways from the ruling.

The Court Found That Grubhub Did Not Have The "Right To Control" Its Drivers.
By way of quick background, this case involves a former GrubHub driver named Raef Lawson who first attempted to bring a class action lawsuit against the on-demand food delivery service, claiming that he and many other delivery drivers should have been classified as employees instead of independent contractors. The judge did not allow him to proceed with a class action, however, only permitting him to proceed with a claim for under $600 in allegedly unreimbursed expenses—to which he would only be entitled if he is found to be an employee, not a contractor.

If he made it past the initial misclassification hurdle in the judge's eyes, however, his attorney indicated it would open the door to thousands of similar drivers prevailing under California's notorious Private Attorneys General Act (PAGA). More significant, however, was the possibility that such a ruling would start a snowball effect and lead to other rulings against gig economy companies, given that the overwhelming number of businesses in this new realm—think Uber, Lyft, Postmates, Handy, TaskRabbit, and others—use an independent contractor system with their workers.

The case went to a bench trial in September, the parties made their final arguments in written briefs soon thereafter, and closing arguments were heard on October 30. Over three months later, Judge Jacqueline Scott Corley issued her final ruling today, and businesses operating in the gig economy can certainly say it was worth the wait.

The key to her decision: a finding that Grubhub lacked necessary control over the driver's work to be considered an employee. In California, as in most other states, the principal test of an employment relationship is whether the business has "the **right to control** the manner and means of accomplishing the result desired." Judge Corley found the following:

- Grubhub exercised little control over how Lawson made his deliveries, not interfering with his choice of vehicle;
- The company didn't control his appearance, not requiring him to wear a special uniform or meet any appearance standards;
- Grubhub had no particular training or orientation that drivers needed to attend;
- The driver could have had anyone he wanted accompany him while making deliveries;
- Lawson, not Grubhub, controlled whether and how he worked and for how long;
- Drivers could cancel their shifts right up to the time they were to start with no apparent negative consequences; and
- Grubhub prepared no performance evaluations for their drivers.

While Certain Other Factors Pointed To An Employee-Employer Relationship, They Were Ruled Not To Be Determinative.

This wasn't a slam-dunk decision in favor of Grubhub, however. The judge was troubled by the fact that several "secondary" factors pointed to an employer-employee relationship between Grubhub and its drivers. Specifically, she noted that Lawson was not engaged in a distinct occupation or business; that no special skills were necessary to operate as a delivery driver; that he and other drivers were essentially paid by the hour rather than by delivery; and that delivering food—the very task that drivers are retained to perform—is a regular part of Grubhub's business. These factors often lead courts to conclude that the individual in question should be classified as an employee.

However, she also pointed out that additional secondary factors weighed in Grubhub's favor: for example, the company did not provide him any tools for his work, and neither party contemplated the work to be long-term or regular, but instead episodic and at the driver's convenience. At the end of the day, the judge was forced to weigh all of the factors, both primary and secondary, and make a ruling that included consideration of all relevant aspects of the relationship. "Considering all the facts, and the case law regarding the status of delivery drivers," the judge concluded, "the court finds that all the factors weighed and considered as a whole establish that Mr. Lawson was an independent contractor and not an employee."

The Judge Made A Call To The Legislature And Regulators To Modernize Legal Standards And Adjust To The Gig Economy.

Judge Corley's conclusion sends a clarion call to government officials in California (and in some senses, across the country) to adapt their statutory and regulatory tests to meet the demands of the 21st-century workplace. "Under California law, whether an individual performing services for another is an employee or an independent contractor is an all-or-nothing proposition," she said. She noted that a finding in Lawson's favor would have resulted in him being entitled to a multitude of employment rights, whereas a ruling against him leaves him with nothing. "With the advent of the gig economy, and the creation of a low-wage workforce performing low-skill but highly flexible episodic jobs, the legislature may want to address this stark dichotomy."

What Does This Decision Mean For Gig Economy Companies?

This decision is a significant step for gig economy companies and any other business that uses a freelance or contractor model. It provides the closest thing we will get to a blueprint when it comes to structuring operations to meet the legal tests established by the courts to answer a misclassification question. While we may never achieve absolute certainty, this case offers a step-by-step analysis of some very common factors in place at many gig economy businesses and points out which tip the scale towards contractor status and which point more towards employee status.

To be clear, this case only applies California law, and may only be binding in federal court cases. However, given the fact that misclassification tests across the country are so similar in nature, this ruling could be helpful to companies everywhere that seek to capitalize on the new gig economy workforce springing up from coast to coast.

Conclusion

The gig economy is not going away. Instead, it grows with leaps and bounds, expanding well beyond on-demand rideshare and delivery driver companies and entering such fields as the healthcare, hospitality, and even government services industries. Because of this growth, it is incumbent upon government regulators to react and restructure legal standards to face the changing standards that define modern workplace relationships. Judge Corley's conclusion makes this very point, and may spur action from other branches of state and federal government.

We may not have heard the last from this case. Given how much is at stake, it is likely that Lawson will appeal the ruling to the 9th Circuit Court of Appeals. And given the fact that the California Supreme Court is actively considering whether to loosen the very legal standards that led to today's Grubhub victory, we could even see a reconsideration of today's ruling if the misclassification test gets changed. Whatever happens in the future, the Fisher Phillips Gig Economy Practice Group stands ready to advise its clients on the impact of today's ruling and any changes that occur in the future.

For more information on how this decision could impact your business, contact your regular Fisher Phillips attorney or any member of our Gig Economy Practice Group.

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Richard R. Meneghello
Chief Content Officer
503.205.8044
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