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Ninth Circuit Conclusion That Amazon Delivery Drivers Don't Need To Arbitrate Their Claims Under FAA's "Transportation Worker" Exemption Highlights Conflict Among Courts

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Given the ever increasing number of wage-hour class and collective actions being filed against employers, it is no surprise that may employers have turned to arbitration agreements with class and collective action waivers as a first line of defense, particularly after the United States Supreme Court's landmark 2018 *Epic Systems v. Lewis* decision.

If there is a common misconception about *Epic Systems*, however, it is that the Supreme Court concluded that ***all*** arbitration agreements with ***all*** employees are enforceable under ***all*** circumstances. The Court reached no such conclusion. In fact, the Court went out of its way to explain that arbitration agreements remain susceptible to challenges, including challenges that would be available as to other contracts.

And, of course, arbitration agreements are susceptible to challenges under the Federal Arbitration Act ("FAA") itself.

The FAA, which established a federal policy favoring arbitration, extends to arbitration agreements in any contract evidencing a transaction "involving commerce."

Somewhat confusingly, Section 1 of the FAA includes an exemption for individuals who are actually "engaged in … interstate commerce." That is, arbitration agreements that involve "commerce" are not valid under the FAA if the workers are engaged in "interstate commerce." Specifically, under Section 1, the FAA does not apply to seamen, railroad employees, and other workers "engaged in foreign or interstate commerce." This exemption is sometimes referred to as the "transportation worker" exemption.

The courts have struggled to determine whether particular individuals fall within the transportation worker exemption. Their conclusions are far from consistent and are arguably entirely irreconcilable.

Some courts have concluded that the exemption only applies to individuals who themselves transport goods across state lines. Others have concluded that the exemption can apply to persons who transport goods within a single state, never crossing into another state.

In Rittmann v. Amazon.com, Inc., the United States District Court for the Western District of Washington concluded that Amazon “last mile” delivery drivers who did not transport goods across state lines were nevertheless “engaged in … interstate commerce” and, therefore, fell within the exemption to the FAA — meaning that they were not required to arbitrate their claims pursuant to their arbitration agreements.

In a 2-1 split decision, the Ninth Circuit Court of Appeals has now affirmed that decision.

This ruling comes on the heels of a similar ruling from the First Circuit Court of Appeal in July 2020 in Bernard Waithaka v. Amazon.com Inc.

These two decisions permit the delivery drivers to pursue their wage-hour claims as class actions in court, rather than as individual arbitrations – unless the decisions are overturned during en banc reviews or unless the United States Supreme Court steps in.

Given the very different interpretations of the transportation worker exemption, it is certainly possible that the Supreme Court will in fact review the issue and resolve the conflict among the courts.

Until then, these decisions are worth review by employers with arbitration agreements, particularly those who have employees involved in transportation. And it is important for them to keep in mind that even if an arbitration agreement is not enforceable under the FAA, it could be enforced under state law.

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