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Federal Court Finds Delivery Drivers Independent Contractors; California Supreme Court Next?

Article By:

Garrett C. Parks

On February 8, 2018, the U.S. District Court for the Northern District of California ruled that meal delivery drivers working for GrubHub, Inc. are properly classified as independent contractors and not employees. This closely watched case provides "gig economy" companies with a trial decision and (at least temporary) guidance regarding how to classify certain workers.

The Court's decision relies on California's multi-factor "Borello test" for determining whether workers are independent contractors. In this case the Court found that "Grubhub's lack of all necessary control over [Plaintiff's] work, including how he performed deliveries and even whether or for how long [he worked], along with other factors [such as providing his own vehicle and working for other companies]" was enough to tip the balance in favor of concluding that Plaintiff is properly classified as an independent contractor. Accordingly, Plaintiff is not entitled to minimum wage, overtime, expense reimbursement, worker's compensation benefits, or other benefits of employment. Consequently, he also could not prevail on his claims against GrubHub for violations of the California Labor Code or the California Private Attorneys General Act (PAGA).

The watershed ruling provides at least temporary reassurance to gig economy companies in California that classify certain workers as independent contractors. This relief could be short-lived, however, as the California Supreme Court recently heard oral argument in *Dynamex Operations West Inc. v. Superior Court*, which also addresses worker classification. The California Supreme Court is expected to decide whether the Borello test is the proper mechanism to determine whether a given worker has been correctly classified as an independent contractor, or whether the more rigorous "suffer and permit" test drawn from the California Industrial Welfare Commission wage orders (or another test entirely) should apply. We expect the California Supreme Court's opinion to be issued in the next 90 days.

Misclassification of employees remains an issue of great concern to both the California Industrial Welfare Commission and the U.S. Department of Labor.

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