

First Circuit Rules Amazon Delivery Drivers Not Required to Arbitrate Misclassification Claims

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On July 17, 2020, the Court of Appeals for the First Circuit, in an issue of first impression, ruled that an Amazon delivery driver who brought a class action misclassification claim against the company was a transportation worker engaged in interstate commerce, regardless of whether his work required him to cross state lines. Accordingly, his agreement requiring arbitration of disputes and precluding class actions was not governed by the Federal Arbitration Act (“FAA”), which favors enforcement of such arbitration agreements. Rather, it was governed by Massachusetts law and, as such, was unenforceable. The First Circuit’s ruling is significant, as many businesses in Massachusetts make use of independent contractors for transportation and delivery services. In light of the decision, these businesses can no longer rely upon mandatory arbitration and class action waivers to avoid expensive class action litigation of misclassification claims.

In *Waithaka v. Amazon.com, Inc.*, a “last-mile driver” retained by Amazon as an independent contractor brought a class action on behalf of himself and similarly situated delivery drivers in Massachusetts federal court, claiming Amazon and related entities had misclassified them as independent contractors. Relying upon the mandatory arbitration provision in the driver’s independent contractor agreement, Amazon sought to compel arbitration of the plaintiff’s claim. The Massachusetts federal court ruled that the plaintiff driver was a transportation worker engaged in interstate commerce and thus fell within the exemption to the FAA. Accordingly, the court applied Massachusetts law, found that the agreement’s class action waiver violated Massachusetts public policy, and ruled the agreement was unenforceable.

On appeal, the First Circuit agreed with the lower court. It found that, given Amazon’s geographic footprint, its “last-mile drivers,” who transport goods or people during the final leg of the journey, participate in interstate commerce even though such work typically does not require a driver to cross state lines. In so ruling, the Court rejected Amazon’s argument that the Court should look solely at the activities of the workers when considering the applicability of the FAA exception, finding that the FAA’s text, structure, and purpose all support the notion that these types of workers are engaged in interstate commerce. Because these workers fell within the FAA exemption, the FAA’s liberal policy in favor of arbitration did not govern the agreement. Rather, the First Circuit ruled that Massachusetts law applied and, under Massachusetts law, the agreement’s class action waiver ran contrary to Massachusetts public policy, rendering the agreement unenforceable.

With the *Waithaka* decision, the First Circuit joins a number of other courts of appeals who have either weighed in or will render a decision soon on whether the FAA mandates delivery drivers to arbitrate their employment-related disputes. The Seventh Circuit and Ninth Circuit are expected to deliver opinions on the subject in cases filed by GrubHub Inc. delivery drivers and Amazon delivery drivers, respectively, while the Third Circuit has already rejected Uber’s attempt to remove a misclassification case into arbitration under the FAA. While the threshold issue in each of these cases remains the same, these appeals may ultimately be decided on state law grounds if those circuits rule that these “last-mile drivers” fall under the FAA exemption. The *Waithaka* decision calls into question the efficacy of mandatory arbitration agreements containing class action waivers entered between employers who may have some effect on interstate commerce and their independent contractors, particularly if those independent contractors are located in Massachusetts. In light of the decision, business that rely upon independent contractors as transportation workers cannot rely upon arbitration agreements to avoid expensive class action misclassification litigation.

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