February 15, 2018

COURT RULES GRUBHUB DRIVER WAS INDEPENDENT CONTRACTOR; WHAT'S THE IMPACT FOR THE GIG ECONOMY?

In a long-awaited decision, a federal district court in California has ruled that a driver for food delivery app Grubhub was an independent contractor and not an employee under California law. While the ruling in *Lawson v. Grubhub, Inc.* is expected to have an impact on other "gig economy" companies that offer customers an opportunity to connect with goods or services through smartphone apps, the case is not the last word on worker classification.

Plaintiff Raef Lawson was an aspiring actor who worked as a food delivery driver for several months. Lawson filed an individual and PAGA action alleging that Grubhub violated California labor laws, including failing to pay minimum wage and overtime and not reimbursing expenses, by misclassifying drivers as independent contractors.

The court focused primarily on the degree of control that Grubhub exercised over the drivers' work. It concluded that Grubhub lacked sufficient control to classify Lawson as an employee. Among other factors, Grubhub exercised little control over how drivers performed deliveries and for how long they worked or how often they worked. It also did not require drivers to wear uniforms, to meet any particular appearance standards, or to drive any particular types of vehicles. Nor did the company provide any orientation, training, or performance evaluations.

The judge also noted several "secondary" factors, which could be indicative of an employer-employee relationship, including that drivers were paid by the hour and performed work that did not require special skills, and Lawson was not engaged in a distinct occupation or business. In addition, the drivers' work – delivering food – is a core service of Grubhub's business. However, the judge found that on the whole the evidence weighed in favor of establishing that Lawson was an independent contractor and not an employee.

Impact of Ruling

While this decision is generally regarded as a big win for gig-economy companies that rely on independent contractors, the issue is far from settled. To begin, it is only

SF Office
111 Sutter St.
Suite 700
SF, CA 94104
t 415.464.4300
f 415.464.4336

LA Office
11845 W. Olympic Blvd.
Suite 910W
LA, CA 90064
t 310.943.8500
f 310.943.8501

millerlawgroup.com

a federal district court ruling. Thus, while it may have persuasive value, it is not controlling on state or federal courts. In addition, Lawson could appeal the decision to the Ninth Circuit. Even then, the court may not be able to draw clear lines.

What's more, whether a worker is determined to be an employee or independent contractor depends on the facts of the particular case – and often on the court or agency that is reviewing the matter. For example, on the heels of the Grubhub ruling, the National Labor Relations Board released a 2016 advice memorandum determining that Postmates couriers are employees rather than independent contractors.

Ultimately, as the court acknowledged, the legislature may need to reconcile the existing legal guidelines with our modern economy: "Under California law whether an individual performing services for another is an employee or an independent contractor is an all-or-nothing proposition. . . . 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."

We'll keep you posted on further developments.

Miller Law Group exclusively represents business in all aspects of California employment law, specializing in litigation, wage and hour class actions, trials, appeals, traditional labor, compliance advice and counseling. If you have questions about these developments or other workplace obligations, please contact us at (415) 464-4300.