First Circuit: Transportation Workers Exempt from Arbitration in Disputes Regarding Status as Employees Versus Contractors

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On May 12, 2017, the First Circuit ruled in *Oliveira v. New Prime, Inc.*, No. 15-2364 (1st Cir. May 12, 2017) that contract disputes regarding whether transportation workers are independent contractors or employees are exempt from the Federal Arbitration Act ("FAA") and thus they cannot be compelled to arbitration under the FAA. The Supreme Court has previously found that Section 1 of the FAA, which in relevant part states, "but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce," holds "exempt[] from the FAA . . . contracts of employment of transportation workers." *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 119 (2001).

Relying on the language of the statute, the First Circuit held in *Oliveira* that disputes regarding employment versus contractor status are not bound to be arbitrated under the FAA. Rejecting the analyses of numerous lower courts that excluded independent contractor agreements from "contracts of employment," the First Circuit looked to the meaning of the term "contracts of employment" as it would have been understood when the FAA was passed.

The First Circuit's holding is of particular interest in light of the ongoing disputes between app-based transportation companies, such as Uber and Lyft, and their drivers, regarding the classification of those drivers as independent contractors, as opposed to as employees. The implications of such classification are far-reaching, and include whether a company is required to provide benefits, overtime, expense reimbursement, and other benefits of employment to its drivers and whether a company can be held vicariously liable for acts committed by its drivers. App-based transportation companies may argue that they are not transportation providers as that term is understood by law and thus their drivers cannot be transportation workers, and that remains an open issue to be decided by the courts.

As for traditional transportation providers such as livery services, which are increasingly including arbitration agreements in their driver contracts that purport to render their drivers independent contractors, the First Circuit has provided valuable guidance in interpreting the FAA. The *Oliveira* decision may well assist drivers and other transportation workers in keeping their claims in federal courts across the country, shining a public light on employers' misclassification of employees resulting in wage and hour violations.

Wigdor LLP has extensive experience representing both employees and employers regarding wage and hour compliance and violations. If you have any questions, concerns or doubts about whether you are being properly classified as an independent contractor, or whether you are being paid properly or may be entitled to overtime pay, consult with an attorney or the U.S. Department of Labor or New York State

Department of Labor. The attorneys and staff at Wigdor LLP would be happy to talk with you about your rights and any questions you may have.

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