



TECH INDUSTRY

Grubhub wins trial. It has contractors, not employees

The first case to go to trial classifying gig economy workers ends in favor of Grubhub. It won't be the last word.

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The first worker classification case in the gig economy to make it to trial ends with a win for Grubhub. But it likely won't be the last case we see on this issue.

Getty Images/Tetra Images

For four months, Raef Lawson delivered restaurant takeout orders for on-demand company Grubhub. Before he could even start, he had to go through a background check and watch online training videos that taught him company etiquette. He typically wore Grubhub's bright red polo shirt and baseball cap when out on deliveries.

But that didn't make him an employee, according to a first-of-its-kind verdict issued last Thursday in the US District Court for the Northern District of California.

In the lawsuit, filed in December 2015, Lawson said he should've been classified as an employee and not an independent contractor. He said he received subpar wages because of that classification. Lawson v. Grubhub went to trial in September 2017.

The case came down to control, with Grubhub arguing that Lawson was his own boss, who set his own work schedule. Federal Judge Jacqueline Scott Corley agreed.

"While some factors weigh in favor of an employee relationship, Grubhub's lack of all necessary control of Mr. Lawson's work, including how he performed deliveries, and even whether or for how long ... persuade the Court that the contractor classification was appropriate for Mr. Lawson during his brief tenure with Grubhub," Judge Corley wrote.

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Sally Culley, employment lawyer

The case highlights what many see as the crux of the gig economy. Who actually benefits from it? Gig workers are expected to supply their own cars and pay for maintenance, gas, repairs and related expenses. Companies avoid the costs they'd otherwise have to assume for employees, including health insurance, paid sick days, Social Security and -- for some workers -- overtime. Benefits cost employers roughly 30 percent of a worker's salary, according to the US Bureau of Labor Statistics. Clearly, companies like Grubhub are saving big by classifying workers as contractors.

This ruling "validates the freedom our delivery partners enjoy from deciding when, where and how frequently to perform deliveries," said Grubhub CEO Matt Maloney. "We will continue to ensure that delivery partners can take advantage of the flexibility."

More to come?

Still, Grubhub's win doesn't exactly endorse its business model.

"Grubhub was a winner here," said Sally Culley, an employment lawyer with Rumberger Kirk & Caldwell. But, she said, "the case only applies to this particular plaintiff."

Different states have different laws defining what it means to be an employee. Other plaintiffs may have stronger cases, Culley said, even though Lawson was represented by labor lawyer Shannon Liss-Riordan, who famously sued Uber and Lyft in similar complaints. Both of those ended in settlements (although Uber's is still pending).

"It's a little bit of a setback for the drivers who want to be classified as employees," Culley said. "But it's certainly not the end of the road."

In other words, don't expect these types of lawsuits to stop.

Liss-Riordan, for example, has also another lawsuit against Grubhub that's pending in Illinois federal court. More than 7,000 Grubhub drivers from around the US have already opted in to *Souran v. Grubhub*, which has been conditionally certified as a federal Fair Labor Standards Act class-action lawsuit.

Such legal battles may be why several on-demand companies have rethought the independent contractor classification. Grocery-delivery startup Instacart switched hundreds of its personal shoppers from contract workers to part-time employees in 2015. And house-cleaning startup Homejoy also announced in 2015 that it was permanently shutting down after being sued over the classification of its workers. Similar lawsuits have popped up against Postmates, Handy, Shyp, DoorDash and Washio.

"This ruling and others like it will continue to refine how workers are classified in this new, emerging landscape," said Dan Lear, lawyer and director of industry relations at online legal services marketplace Avvo.

In her ruling, Judge Corley wrote about the need to better define employees -- who would have "rights to minimum wage, overtime, expense reimbursement and workers compensation benefits" -- in today's on-demand world.

"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," she wrote.

As for Liss-Riordan's reaction on Judge Corley's ruling?

"We plan to appeal," Liss-Riordan said.