

January 2021 Independent Contractor Law Update

“January 2021 may well be remembered in the independent contractor area of law as the ‘not so fast’ month. The Fifth Circuit Court of Appeals told lower courts ‘not so fast’ when it comes to certifying collective actions,” writes Richard Reibstein Esq. in *Locke Lord’s Independent Contract Misclassification & Compliance blog*.

“That appellate court imposed a new and more rigorous standard that plaintiffs will have to meet to attain certification of their collective actions under the Fair Labor Standards Act. GrubHub and other companies that engage couriers to deliver food from restaurants have generally succeeded in compelling arbitration of courier claims for independent contractor misclassification. These companies have avoided application of the arbitration exemption in the Federal Arbitration Act for interstate transportation workers. As we reported here on September 18, 2020, the United States Court of Appeals for the Seventh Circuit held that couriers providing deliveries for customers of GrubHub were not involved in interstate commerce. But only last week, as reported below, a Massachusetts court essentially said, ‘not so fast,’ reaching the opposite conclusion when it held that couriers providing deliveries to GrubHub customers of pre-packaged and non-food items originating outside of Massachusetts (such as soft drinks, chips, toilet paper, cleaning products, and flowers) were exempt from arbitration under the interstate transportation worker exemption. This area of the law is evolving with new arguments by plaintiffs’ class action lawyers seeking to circumvent arbitration agreements.”

Read the article.