Post-Dynamex, Workers Claim Lyft, Postmates Mislabel Them

By RJ Vogt

Law360 (May 10, 2018, 8:26 PM EDT) -- Two putative class action lawsuits filed in California state court have accused Lyft Inc. and Postmates Inc. of mislabeling drivers and couriers as independent contractors, arguing they should be considered employees under the new test adopted in the state high court's landmark Dynamex decision last month.

In that ruling, the California Supreme Court rejected a classification test used in the Golden State for almost three decades, adopting a different standard known as the ABC test that presumes workers are employees instead of independent contractors for purposes of state wage orders — which govern items such as overtime and minimum wage — and places the burden on employers to prove workers aren't employees.

In light of Dynamex, Postmates couriers led by Dora Lee and Lyft drivers led by Matthew Talbot and Monica Garcia said in their suits filed Tuesday that the on-demand economy companies that hired them to deliver dinners and passengers cannot pass the new standard.

Plaintiff's counsel for both suits, Shannon Liss-Riordan of Lichten & Liss-Riordan PC, who also represents Uber drivers in a similar fight against misclassification, told Law360 on Thursday "it is going to be very difficult for these companies to justify independent contractor status for their drivers."

"After Dynamex, we believe that the companies' continued classification of the workers as independent contractors in California is a willful violation of the law," Liss-Riordan said.

Fisher Phillips labor and employment partner Rich Meneghello told Law360 on Thursday that the suits could mark the beginning of a wave of litigation launched in response to the new standard.

"Gig economy companies can expect to see a resurgence in lawsuits and demand letters in the near future," Meneghello said. "This might be a cruel summer for gig economy companies in California."

The decision in Dynamex Operations West Inc. v. The Superior Court of Los Angeles County, which upheld the certification of a group of drivers in a wage-and-hour class

action against the shipping company Dynamex, eschewed the use of a multifactor test based on a 1989 state Supreme Court ruling. That decision emphasized an employer's control over workers claiming employee status and considered several secondary factors in analyzing a worker's classification.

Instead the court applied a standard called the ABC test, which requires an employer to show that a worker is free from its control and direction, performs work outside the usual course of a hiring entity's business, and is engaged in an independently established trade, occupation or business in order to be considered an independent contractor.

An employer must meet each of those elements — elements A, B and C — for an independent contractor classification to hold up for purposes of wage orders.

In Tuesday's suits, the drivers and couriers invoke the B element of the test, saying Lyft and Postmates "cannot" prove they "perform services outside its usual course of business."

Both suits allege the gig-economy companies conduct unfair business practices because they failed to pay them minimum wage or reimburse for business expenses, and the suit against Lyft includes an additional claim of failure to pay overtime.

But one caveat of the Dynamex ruling was that it adopted the ABC test in the context of wage orders, or provisions in the California Labor Code that have wage order parallels. As a result, some attorneys have said California Labor Code protections that are not addressed in wage orders — like reimbursement for business expenses — technically remain an open issue.

Liss-Riordan told Law360 on Thursday, however, that the transportation wage order does require employers to pay for "tools and equipment" required to do the job.

"In our driver misclassification cases, we have been requesting that the drivers be reimbursed at the IRS mileage rate for the use of their vehicles, which would be required under the wage order," she said.

Liss-Riordan also noted that it remains to be seen whether these cases can be pursued on a class basis, given the companies' arbitration clauses. The nation's high court is currently considering whether class action waivers in arbitration agreements violate the National Labor Relations Act provisions guaranteeing the rights of workers to act collectively.

"In order to recover anything, drivers may need to file individual arbitrations," she added. "We are waiting for the U.S. Supreme Court to answer that question.

Representatives for Lyft declined to comment on Thursday.

Representatives for Postmates did not immediately respond to a request for comment on Thursday.

The drivers in both cases are represented by Shannon Liss-Riordan of Lichten & Liss-Riordan PC.

Counsel information for Lyft and Postmates was not yet available Thursday.

The cases are Dora Lee v. Postmates Inc., case number 18-566394, and Matthew Talbot et al. v. Lyft Inc., case number 18-566392, both in the Superior Court of the State of California for the County of San Francisco.

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