

News

Amazon Delivery Workers' Arbitration Agreements Are Invalid, Ninth Circuit Rules

“Amazon drivers have been essential workers during the coronavirus pandemic, and it is shameful that the richest man in the world, Jeff Bezos, has been able to get away with not properly paying the drivers for all of their time and depriving them of all employment protections through their misclassification as independent contractors,” said lead plaintiffs counsel Shannon Liss-Riordan of Lichten & Liss-Riordan.

By **Alaina Lancaster** | August 19, 2020 at 04:13 PM



An Amazon Prime delivery person walks through a neighborhood wearing a mask to protect against coronavirus in Baltimore, on April 5. Photo: Diego M. Radzinski/ALM

Amazon delivery workers are exempt from employer arbitration agreements, a California federal appeals court ruled Wednesday.

The U.S. Court of Appeals for the Ninth Circuit [affirmed a district court ruling](#) finding that employees with Amazon's app-based delivery program Amazon Flex, or AmFlex, are engaged in interstate commerce, which qualifies them for an exemption under the Federal Arbitration Act.

The order comes in a worker misclassification suit against Amazon, which is defended by attorneys from Morgan, Lewis & Bockius in Washington, D.C., and New Jersey, and falls in line with [a similar opinion](#) in the U.S. Court of Appeals for the First Circuit holding AmFlex employees in Massachusetts are covered by the exemption.

In the majority opinion, Judges Milan Smith and N. Randy Smith of the U.S. Court of Appeals for the Ninth Circuit found that both the plain language of the act and prior case law supports their ruling that workers who transport goods shipped across state lines are not bound by their arbitration agreements.

Judge Daniel Bress of the U.S. Court of Appeals for the Ninth Circuit dissented, finding that Amazon had the better argument "in some instances by a leg and in others by a length."

The majority decided that the text of the FAA does not "suggest that a worker employed to deliver goods that originate out-of-state to an in-state destination is not 'engaged in commerce' any less than a worker tasked with delivering goods between states."

The judges also pushed back against Amazon's assertion that the definition of "engaged in foreign or interstate commerce" must be narrowed to serve the FAA's intended purpose of facilitating arbitration.

The court noted that the U.S. Supreme Court case [Circuit City Stores v. Adams](#) tailored the exemption, referred to as § 1, to apply to the employment contracts of transportation workers, as opposed to all employment contracts. However, the judges found the case did not interpret the language of "engaged in commerce" to mean businesses or employees that cross state lines.

“In light of the weight of authority interpreting ‘engaged in commerce’ not strictly to require the crossing of state lines, we are not persuaded that § 1 is amenable to the interpretation offered by Amazon,” they wrote. “Accordingly, we conclude that § 1 exempts transportation workers who are engaged in the movement of goods in interstate commerce, even if they do not cross state lines.”

Bress argued that for a delivery worker to be engaged in interstate commerce, they themselves must cross state lines, not just the products they deliver.

“Seeking to resist the logical implication of its holding—under which the FAA’s narrow transportation worker exemption could broadly include anyone who delivers goods between any two locations—the majority constructs a new FAA doctrine under which the exemption turns on the supposed ‘continuity’ of the interstate commerce and where items ‘come to rest,’” he wrote.



Shannon Liss-Riordan, Lichten & Liss-Riordan Photo: Jason Doiy Photography

Lead plaintiffs counsel Shannon Liss-Riordan of Lichten & Liss-Riordan litigated both the Ninth Circuit and First Circuit cases finding that AmFlex workers are covered by the interstate commerce exemption.

“Once the Democrats retake the White House and Senate next year, we hope, one of the first orders of business needs to be Congress reversing the scourge of Supreme Court rulings that have upheld arbitration agreements over the last decade, allowing powerful corporations to shield themselves from class action lawsuits, which challenge their systemic exploitation of their workers and their evasion of critical employment protections under state and federal law,” she said in an email statement.

Liss-Riordan said she looks forward to pursuing the case as a national class action on behalf of Amazon drivers, who are seeking classification as employees.

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