# Are Independent Contractor Transportation Workers Exempt from the Federal Arbitration Act?

## Labor & Employment Law Update

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The Supreme Court recently heard arguments on an issue which will have lasting implications on the arbitrability of claims between employers and certain independent contractors. Where the Court lands will have significant impact on employers moving forward, not only with regard to the form of contracts employers offer, but also with regard to how they classify workers in the transportation field.

Currently, the Federal Arbitration Act (the "FAA") authorizes transportation employers to include mandatory arbitration provisions in employment contracts, which can require employees to arbitrate workplace disputes in lieu of going to court, and limit them to bringing those claims individually. This is obviously a strong tool for employers seeking to minimize the uncertainty and costs of litigation.

However, as employers with workers engaged in transportation should know, an exception is made in Section 1 of the FAA, exempting "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. §1. This has become known as the "transportation" exemption. Historically, Congress included this exemption, in part, because transportation workers were subject to separate federal dispute resolutions statutes already in effect.

In *New Prime, Inc. v. Oliveira,* Sup. Ct. Case. No. 17-340, the Court considered the "transportation" exemption in the FAA – specifically two issues: (1) whether disputes over its applicability should be resolved by an arbitrator or a judge and (2) whether the exemption applies to independent contractors as well as employees.

The scope of the "transportation" exemption has been wrangled over for years, culminating in the 2001 landmark decision in *Circuit City Stores, Inc. v. Adams*, where the Court plainly read the exemption, holding that it did not apply to any workers outside of the delineated transportation industries. In other words, non-transportation workers could no longer try to seek the benefit of the exemption.

Despite this precedent, workers have continued to try to expand its application with New Prime being just the latest example – this time to independent contractors working in the transportation field. Following submissions and several *amicus briefs* in support of both sides, the issue and positions of the parties were clear. When defining the exemption's scope, it uses the term "contracts of employment." New Prime, the Petitioner, has asked the Court to interpret this term narrowly, arguing it should mean only those contracts that establish a common-law employment relationship. Oliveira, the Respondent, argued the term should refer to all agreements to perform work, regardless of form, which would necessarily include independent contract agreements.

The Court heard oral argument on October 3, 2018. Because the case was submitted prior to new Associate Justice Kavanaugh's confirmation, the case was only heard by eight justices. So if the justices split along ideological lines 4-4, Oliveira will prevail and the First Circuit's ruling that the independent-contractor agreement at issue was a "contract of employment" for purposes of the exemption.

The Court is not expected to rule until early 2019. This blog will update as soon as the Court's opinion is issued.

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