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BLOG

In Coast-to-Coast Rulings, Courts Certify Classes in Worker Misclassification Suits

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Key Takeaway

Recent class certification decisions in worker misclassification suits illustrate the litigation risks of maintaining common employment policies and practices.

In August 2022, federal courts in California and New Jersey issued two class certification decisions that may signal an uptick in worker misclassification suits. In *Roman v. Jan-Pro Franchising Int'l, Inc.*, the plaintiffs were three janitors who alleged that the defendant violated certain labor laws applicable to employees by misclassifying the plaintiffs as independent contractors.[1] In *Bedoya v. Am. Eagle Express, Inc.*, the plaintiffs were couriers who made similar claims.[2]

The courts in both cases certified classes under Federal Rule of Civil Procedure 23 over the defendants' objections. The key finding in both decisions was that common questions of law or fact would predominate over individualized questions, thus satisfying Rule 23(b)(3). For instance, in both cases, the courts identified a common issue of whether the workers performed work that was outside the usual course of the defendant's business. Both courts ruled that this common question was capable of class-wide resolution because all workers had similar job duties and were governed by the same contracts and policies, and the defendants' business were the same in relation to all workers.[3]

The courts also identified other common questions that would predominate, such as (1) whether the workers were customarily engaged in an independently established trade, occupation, profession, or business,[4] and (2) that the defendant exercised actual control over the workers.[5] The "control" question was "provable by common evidence," including the company's uniform contracts with the workers and company-wide policies.[6] And while the company argued that this common evidence showed that it did *not* exercise control because it acted as a mere broker, the court rejected that argument as better suited for summary judgment, not class certification: "When, as here, 'the concern about the proposed class is not that it exhibits some fatal dissimilarity but, rather, a fatal similarity—[an alleged] failure of proof as to an element of the plaintiffs' cause of action—courts should engage that question as a matter of summary judgment, not class certification.'"[7]

Based on this Rule 23 analysis, the two courts certified classes comprising hundreds of workers. With potential per-plaintiff damages that far exceed the value of certain other consumer claims, these recent misclassification decisions may encourage the plaintiffs' bar to pursue these cases more aggressively.

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[1] 2022 U.S. Dist. LEXIS 137190 (N.D. Cal. Aug. 2, 2022).

[2] 2022 U.S. Dist. LEXIS 147119 (D.N.J. Aug. 17, 2022).

[3] *See Bedoya*, 2022 U.S. Dist. LEXIS 147119, at *26 (identifying "fairly abstract questions—about the nature of the service provided, the usual course of business of the employer, and whether the service was performed at the employer's place of business—that do not vary by individual" (quotation marks omitted)); *Roman*, 2022 U.S. Dist. LEXIS 137190 at *29 (identifying "common policies [that] will help to adjudicate the misclassification question" and ruling that "defendant's statements on its website and advertisements [are] equally applicable to all unit franchisees").

[4] *See Bedoya*, 2022 U.S. Dist. LEXIS 147119, at *28.

[5] *Id.* at *22–26.

[6] *Id.* at *22–23.

[7] *Id.* at *26 (quoting *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016)).

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