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Ninth Circuit Broadly Construes Exemption to Federal Arbitration Act

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The Ninth Circuit recently issued an opinion that signals some movement in the direction away from enforcing employment-related arbitration agreements.

In *Miller v. Amazon.com*, Case No. 2:21-cv-00204-BJR, the Ninth Circuit affirmed the district court's order denying Amazon's motion to compel arbitration in a case brought by Amazon Flex delivery drivers who made last-leg deliveries of goods shipped from other states or countries to consumers, as well as tip-eligible deliveries of food, groceries, and packages stored locally. In the complaint, the plaintiffs alleged that Amazon violated state laws by failing to honor its promise that workers would receive 100% of the tips that customers added for deliveries of local goods.

Amazon argued that the Ninth Circuit's decision in *Rittmann v. Amazon.com* was no longer good law in light of the U.S. Supreme Court's decision in *Southwest Airlines Co. v. Saxon*. In *Rittmann*, the Ninth Circuit held that Amazon Flex delivery drivers—like the plaintiffs in *Miller*—were exempt from the Federal Arbitration Act ("FAA") because they were workers engaged in interstate commerce since they delivered goods shipped from other states or countries to their final destination. Amazon argued *Rittmann* was no longer good law because in *Saxon*, the Supreme Court explained that courts must look at the workers' own activities rather than the activities of the business for which they worked when determining whether an employee belongs to a class of workers engaged in interstate commerce under § 1 of the FAA. The Court declined to revisit its decision in *Rittmann* and stated that *Rittmann* remains binding precedent after *Saxon*.

Amazon also argued that, even if *Rittmann* remained good law, the Court should find that the FAA applied to the plaintiffs in *Miller* because they differed from the plaintiffs in *Rittmann* since they scheduled tip-eligible local deliveries, which did not involve interstate commerce. The Court rejected Amazon's argument holding that plaintiffs were the "exact same class of workers we discussed in *Rittmann*: Amazon Flex delivery drivers who 'are engaged to deliver packages from out of state or out of the country, even if they also deliver food from local restaurants.'" Accordingly, the plaintiffs were engaged in interstate commerce—even if that engagement also involved intrastate activities. Relying on *Saxon*, the Court noted that "the relevant question is what work 'the members of the class, as a whole, typically carry out,' which here includes last-mile deliveries." Since Amazon Flex delivery drivers have "one contract of employment which governs all of their work, including shifts for last-mile deliveries and shifts for tip-producing deliveries," the plaintiffs in *Miller*—like in *Rittmann*—were exempt under § 1 of the FAA.

Finally, Amazon argued that even if plaintiffs were exempt under the FAA, the arbitration provision should be enforced under state law. Again, the Court disagreed explaining that no state law applied to plaintiffs' arbitration provision. While a subsequent amendment to the arbitration agreement required enforcement of the provision under Delaware state law, the amendment did not apply to the plaintiffs because their agreement stated that any modifications to the arbitration provision would not apply to claims that accrued or to disputes that arose prior to such modification, as was the case here.

Notably, in both *Miller* and *Rittmann*, the Ninth Circuit adopted a somewhat broad interpretation of *Saxon* and shielded employees from forced arbitration. Given the recent criticism of employment-related arbitration agreements, these cases suggest a continued shift away from enforcing such agreements. We will continue to closely monitor these developments.

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