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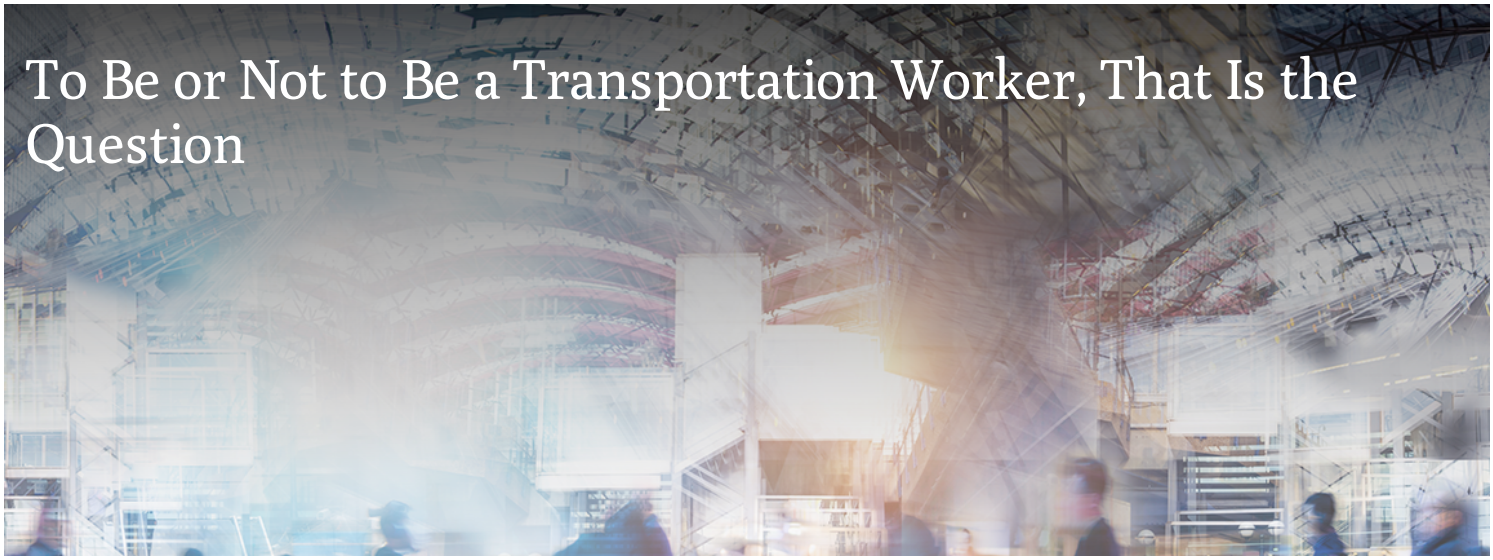
BLOG

To Be or Not to Be a Transportation Worker, That Is the Question



APRIL 23, 2024

KEY TAKEAWAY:

Depending on how the Supreme Court decides *Bissonnette*, restaurants may have increased exposure to class actions by independent distributors, such as the plaintiffs in *Bissonnette*.

On April 12, 2024, the United States Supreme Court overturned the Second Circuit's *Bissonnette* decision. SCOTUS's definition of a "transportation worker" for purposes of the § 1 FAA exemption from arbitration was broader than the Second Circuit's; SCOTUS explained that "[a] transportation worker need not work in the transportation industry to fall within the exemption from the FAA provided by § 1 of the Act. The Second Circuit accordingly erred in compelling arbitration on the basis that petitioners work in the bakery industry." *Bissonnette v. LePage Bakeries Park St., LLC*, No. 23-51, 2024 WL 1588708, at *6 (U.S. Apr. 12, 2024). As a result, the restaurant industry, among other sectors with workers whose duties include driving, likely will face more class actions based on wage claims from independent distributors, such as the plaintiffs in *Bissonnette*.

In *Bissonnette*, plaintiffs, independent distributors comprising a putative class, sued Flower Foods, Inc. and several of its subsidiaries, alleging "unpaid or withheld wages, unpaid overtime wages, and unjust enrichment." *Bissonnette v. LePage Bakeries Park St., LLC*, 2022 U.S. App. LEXIS 27628, at *1 (2d Cir. May 5, 2022). Plaintiffs sued for alleged violations of the Fair Labor Standards Act, along with "Connecticut wage laws," *id.* at *2, and defendants sought to compel arbitration. The crux of the appeal focused on determining "whether the plaintiffs are 'transportation workers' within the meaning of the Federal Arbitration Act[.]" *Id.* at *2–3. On appeal, after permitting a motion for rehearing, the Second Circuit decided that the plaintiffs were not transportation workers, and were therefore subject to arbitration under the FAA. *Id.* at *4.

In defining who was considered a transportation worker, the Second Circuit stated "that an individual works in a transportation industry if the industry in which the individual works pegs its charges chiefly to the movement of goods or passengers, and the industry's predominant source of commercial revenue is generated by that movement." *Id.* at *12. When explaining why the plaintiffs were not transportation workers under the FAA, the panel stated that "[c]ustomers pay for the baked goods themselves; the movement of those goods is at most a component of total price. The commerce is in breads, buns, rolls, and snack cakes—not transportation services." *Id.* at *13.

Through this differentiation, the Court defined the plaintiffs as members of the baking industry, not the transportation industry. Thus, the Court decided to "affirm the order compelling arbitration and dismissing the case." *Id.* at *16.

In September 2023, the Supreme Court granted certiorari, and as of March 2024, the Supreme Court has yet to rule on *Bissonnette*. SCOTUS's decision could create a seismic shift in potential exposure to class claims from an unexpected quarter. For instance, within the restaurant industry, if independent distributors such as the plaintiffs are classified as transportation workers, and thus exempt from the FAA's arbitration provisions, this could increase the likelihood that restaurants would face more class actions, instead of litigating individual wage claims in arbitration.

2 Min Read

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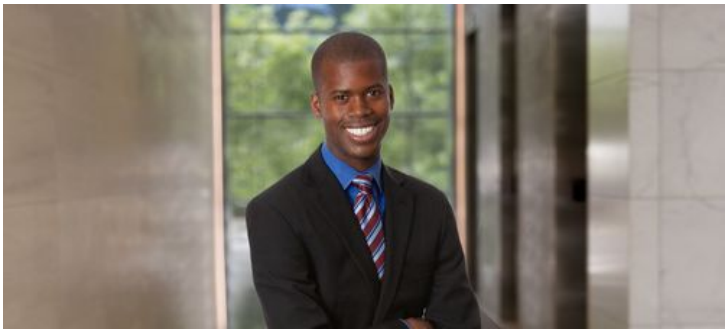

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