

Employment Group Of The Year: Gibson Dunn

By Braden Campbell

Law360 (January 25, 2019, 12:48 PM EST) -- Gibson Dunn & Crutcher LLP's employment practice prides itself on working at the vanguard of workplace law and certainly did so last year, winning major gig economy rulings and conducting #MeToo-related probes for prominent companies to earn a spot among Law360's 2018 Employment Groups of the Year.

The practice lodged a major win in February when it convinced a California Magistrate Judge that a former Grubhub delivery worker was not its employee, which came after the country's first ever trial in a case alleging a gig economy company misclassified its workers. Months later, the firm persuaded the Ninth Circuit to dissolve a class of hundreds of thousands of Uber drivers in a similar misclassification suit that threatened to upend the company's business model.

That the firm has been at the center of two big gig economy rulings is a credit to its focus on coming up with "new ideas for new problems," said Jason Schwartz, co-chair of Gibson Dunn's employment group.

"The gig economy falls right into that," Schwartz said. "It's a square peg in a round hole, the current set of employment laws are not designed to deal with it, so it really does require new thinking."

Former Grubhub courier Raef Lawson sued the food delivery company, alleging the company misclassified its workers as contractors rather than employees. He claimed the company denied workers overtime and reimbursement for costs including vehicle maintenance, gas, parking and the phone data charges they incurred using the company's app.

But Magistrate Judge Jacqueline Scott Corley said Grubhub didn't have enough control over Lawson to be his employer. Among other things, she found Grubhub did not control how Lawson made his deliveries, what he wore and how he decked out his car, and it did not make him take part in a training program.

Although California has since adopted a more worker-friendly classification test — which Lawson is asking an appeals court to apply to his suit — the ruling has been a big one for gig economy employers, many of which operate under similar models to Grubhub's.



“It’s really significant not only for Grubhub but Uber and other companies that are dealing with this type of contractor situation,” said Catherine Conway, who chairs the practice with Schwartz. She said Judge Conley’s analysis “can be used by others in reference to their going-forward strategy, so it’s a very significant case.”

Then in September, Gibson Dunn secured its second major gig economy win of the year when the Ninth Circuit dismantled a class of hundreds of thousands of drivers alleging Uber misclassified them as independent contractors, dealing a massive blow to one of the most closely watched suits of 2018.

The panel reversed a trial court ruling that Uber’s arbitration agreements with workers were invalid, saying the pacts were enforceable under the U.S. Supreme Court’s May ruling in Epic Systems Corp. v. Lewis.

Conway said the ruling has given employers that send workers’ claims to arbitration “further reassurance in reference to arbitration agreements and the enforceability of those agreements.”

Gibson Dunn has long handled high-stakes harassment investigations for employers, a facet of employment law that has taken on greater significance in the #MeToo era. The firm handled harassment probes last year for Wynn Resorts and Vox Media, among others it declined to disclose.

Not only have these investigations helped clients find out if they have a harassment problem, they help them improve their workplaces going forward, Schwartz said.

“A lot of these investigations turn into not just fact-finding about what happened in the past and who knew what when, but also what can we do going forward to be on the leading edge of this and to make sure we have an inclusive, safe, welcoming workplace,” Schwartz said.

The firm also made waves last year with its work for employers in traditional industries, including the closer role it played in a long-running class action accusing J.B. Hunt Transport Services of violating California wage law. After the Ninth Circuit reversed J.B. Hunt’s trial court win, the company hired Gibson Dunn to handle the case on remand. Back at the district court, the firm won an August ruling dissolving the 11,000-member class on the eve of trial.

In another signature win in 2018, Gibson Dunn’s employment team put the final nail in the coffin of the U.S. Department of Labor’s fiduciary rule, which would have required financial professionals to act in their clients’ best interests when recommending investment products.

“We’ve been lucky enough to have people trust us with a number of [sensitive issues] and really have a kind of fun opportunity to develop the law,” Schwartz said of the firm’s 2018.

--Editing by Alyssa Miller.