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TOP LABOR & EMPLOYMENT LAWYERS 2023



**THEANE D.
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Theane D. Evangelis is co-chair of Gibson, Dunn & Crutcher LLP's global litigation practice group and an authority on the application of employment law to the gig economy. She represents the tech sector's business model for clients like Uber Technologies, Inc., Postmates Inc. and Grubhub Inc.

She joined the firm in 2006 after graduating summa cum laude from

New York University School of Law and clerking for Associate Justice Sandra Day O'Connor at the U.S. Supreme Court.

Evangelis spoke in mid-July, a day after the state Supreme Court ruled against Uber in a case she'd argued, holding that California workers whose claims over labor law violations are sent to arbitration are also entitled to pursue their employers in collective actions under the state's Private Attorneys General Act. *Adolph v. Uber Technologies, Inc.*, S274671 (Cal. S. Ct., filed May 20, 2022).

She wasn't ready to analyze the unanimous 25-page opinion. "We're still in evaluation mode, though we believe the ruling contravenes the U.S. Supreme Court decision and the FAA," she said, referring to the high court's 2022 holding in *Viking River Cruises* and to the Federal Arbitration Act. She and her client "are considering our appellate options," she added.

Another trip to the U.S. Supreme Court over PAGA could be on the horizon, legal observers predicted. The tension between employers' wish to hold workers to arbitration clauses in their contracts and workers' push for collective action when on-the-job disputes arise remains not fully resolved.

It was a rare setback for Evangelis. A few months earlier, a 9th Circuit

panel agreed with her and her clients Uber, Postmates and individual drivers in reversing a district court in the first successful constitutional challenge to California's AB 5, which expanded the stringent ABC test for employee classification to the entire Labor Code and the Unemployment Insurance Code. Evangelis successfully argued that the measure arbitrarily discriminated between similarly situated companies in violation of the Equal Protection Clause. The circuit previously rejected similar claims by others. *Olson v. State of California*, 21-55757 (9th Cir., op. filed March 17, 2023).

And she scored four for four wins following an unusual whirlwind of arguments before separate federal circuit panels on two consecutive days last November. In Philadelphia, she argued for Uber in two consolidated cases before the 3rd Circuit; the panel agreed with her that ride-share drivers could be compelled to arbitrate their claims. The next day, by Zoom from her Philadelphia hotel room, she argued successfully for Postmates and Grubhub to a 1st Circuit panel over additional arbitration issues.

"The adrenaline rush I get after an argument was even greater after I did those multiple cases," Evangelis said. "I powered through a lot of work on my flight back to California."

—John Roemer