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‘Critical Precedent’: Labor Law Experts Reflect on 10 Years of Gig Economy Litigation Since a Bellwether Grubhub Case

By Kat Black

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2025 marks 10 years since Raef Lawson sued Grubhub in California federal court, alleging that he was misclassified as an independent contractor instead of an employee, qualifying for minimum wage and benefits.

In 2018, then-U.S. Magistrate Judge Jacqueline Scott Corley ruled in Grubhub’s favor, forging a roadmap for litigating the status of app-based gig workers in the United States—and earning Grubhub’s counsel at **Gibson, Dunn & Crutcher** a “Litigators of the Week” distinction.

In years since, *Lawson*—which the Ninth Circuit revived in 2021 and remanded back to the district court—has shown remarkable staying power, weathering a dizzyingly complex suite of state statutes and court rulings that mirror the broader precarity of the national legal landscape surrounding the app-based gig economy.

This week, *Lawson* was poised to stage a “comeback” of sorts during a trial set for April 9, which would decide what civil penalties Lawson was entitled to recover under the California Private Attorneys General Act (PAGA) before the passage of Proposition 22, a 2020 ballot measure that exempted rideshare and delivery app companies such as Uber, Lyft, Grubhub and Doordash from classifying their workers as employees.

Photo: Diego M. Radzinschi/ALM

Grubhub delivery in Washington, D.C.

But on April 7th, the bench trial was vacated in light of the parties’ settlement, seemingly drawing the final curtain on the resilient bellwether case.

“We’re happy to have reached a resolution that we believe is in the best interest of Grubhub and brings closure to these issues as we look ahead,” said **Theane Evangelis**, counsel for Grubhub and a partner in the Los Angeles office of Gibson, Dunn & Crutcher, in a statement.

“Thanks to California voters overwhelmingly enacting Prop 22, drivers who use the Grubhub app will continue to enjoy the freedom and flexibility of working as independent contractors.”

Ahead of the scheduled trial, Litigation Daily spoke with experts about what was at stake in the decade-long litigation and the continuing legal and political fight over the gig economy.

Prop 22

In Feb. 2024, Corley, who in 2022 became a district judge on the Northern District bench, ruled that under Ninth Circuit precedent, Lawson lacked standing to pursue penalties under PAGA for violations that occurred before Prop 22 went into effect in Dec. 2020.

Laura Padin, director of work structures at the **National Employment Law Project**, discussed the ripple effects of Prop 22—which was upheld in July 2024 by the California Supreme Court—beyond *Lawson* and California gig economy legislation.

The ballot initiative, she said, was passed at the height of ridesharing and delivery apps' popularity and earning power.

"It was a broader and clearer test for employment than AB 5, which the companies clearly could not meet," she said.

California's Assembly Bill 5, also known as the "Gig Worker Law," was enacted in 2019 to codify the ABC standard established by the landmark 2018 California Supreme Court ruling in *Dynamex Operations West, Inc. v. Superior Court*.

Dynamex overturned 30 years of the multi-factor *Borello* precedent for determining a worker's independent contractor status in favor of the ABC test, which presumes that all workers are employees unless they meet three criteria: the worker is free from the control and direction of the hiring entity in connection with the performance of the work; the worker performs work that is outside the usual course of the hiring entity's business; and the worker is "customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed."

In 2021, the Ninth Circuit vacated the 2018 *Lawson* ruling in light of the *Dynamex* decision and remanded the case to the Northern District of California, where the court held in 2023 that Lawson was misclassified as an independent contractor under the ABC test for purposes of his minimum wage and overtime claims, but that Grubhub prevailed on the plaintiff's expense reimbursement claim. On remand, Corley also ruled that Lawson was entitled to just $65 in damages for his minimum wage claims.

Padin said that after the ABC standard was adopted, rideshare and food delivery app companies started facing a wave of lawsuits demanding that they classify their workers as employees.

"[*Lawson*] predates that, but even state agencies started suing them for misclassification. … And so they sponsored this ballot initiative that they spent $200 million on to say, 'Our workers shouldn't be employees,'" she said. "And we are dealing with the ramifications of that today, which is that delivery workers in California make less than California's minimum wage—far less, generally speaking."

California's state minimum wage is $16.00 an hour. A study conducted by the UC Berkeley Labor Center found that despite Prop 22 adjustments guaranteeing minimum earnings of 120% of minimum wage, the median hourly wage for a California rideshare driver is $5.97 without tips and $7.63 per hour with tips. Food delivery drivers, it said, can make even less—just $4.98 an hour without tips and $11.43 with tips.

Padin said that the reach of Prop 22 extends far beyond California, citing a 2024 $175 million settlement agreement between the Massachusetts Attorney General's Office and Uber and Lyft after the AG said the companies "threatened" a campaign for a ballot initiative that would classify their workers as independent contractors. The same team from Gibson Dunn that represented Grubhub also litigated the case on behalf of Uber.

"I think the precedent of Prop 22 was … the warning it sent [that] these companies will spend enormous sums on ballot initiatives on legislation to change the law so that they get favorable treatment … They will spend a ton of money to

get that done, and so it also makes it hard to hold them accountable," she said.

The Gig Economy and PAGA

Richard Radcliffe, a partner at **Reich Radcliffe & Hoover** and a specialist in appellate law, said that the gig economy and PAGA have followed parallel—and sometimes intersecting—trajectories over the past ten years.

"It seems like workers and the hiring entities have been on a journey in both the gig economy and … the PAGA world," he said. "A really hot area for PAGA litigation [has been] the interplay of arbitration agreements."

Radcliffe cited the Supreme Court's 2022 ruling in *Viking River Cruises v. Moriana*, which found that "if you are … an employee who has an arbitration agreement that is subject to arbitration, meaning it's enforceable and you're ordered to bring your individual claims in arbitration, then you lose representative standing and therefore can't bring representative claims under PAGA."

"Then the California Supreme Court responded to that a year later with the *Adolph v. Uber* case and said no, even if your individual claims are ordered to arbitration, you retain standing to bring these PAGA claims," he said.

"I think where those two fields would intersect is if there are arbitration claims in the agreements for the app-based drivers that are typically in the gig economy," he said.

"I think there's still going to be a lot of litigation, of course, with the statutory changes [to PAGA legislation], which I think maybe the *Lawson* case … would be addressing. There were statutory changes that created a bright line between June 19, 2024, and after … in terms of one's standing to bring the representative PAGA claims."

Radcliffe noted that the PAGA reforms approved by California Governor Gavin Newsom in July 2024, narrowed the scope of claims that can be brought under the statute. Now, employees can only sue for violations that they have personally suffered—whereas, before, they could bring PAGA claims on behalf of other aggrieved parties.

"So that may curtail it a little bit," he said.

The Impact of *Lawson* and the Limits of Litigation

Samantha Prince, an associate professor of law and director of legal analysis and writing at Penn State Dickinson Law, said one thing to keep in mind is that the agreements that app delivery drivers sign with their employees bind them to arbitration.

"So I don't know how many cases we're going to see," she said.

Padin agreed. "We have had almost no litigation on this issue … because workers cannot sue in court. They're bound by arbitration clauses that say you can't sue Uber, Lyft, DoorDash … in court. You have to go to individual closed-door arbitration proceedings where the only remedy is back pay. You can't get a structural change. … So they are completely reliant on agencies to sue on their behalf. This is where you get state AGs, occasionally suing, but the problem is, state AGs can't go after every violation of law. They can't sue every company—they have limited resources."

But it's clear that the litigation that does exist—and the legislation that surrounds it—carry the stamp of *Lawson*, which has had a reverberating impact on litigation and law in California and beyond, setting—as Gibson Dunn describes it on its website—a "critical precedent" for the gig economy.

Most recently, Gibson Dunn achieved a high-profile win for Uber after securing dismissal with prejudice and a victory for Uber on the merits in the Eastern District of Pennsylvania case *Razak v. Uber Technologies*, which determined that drivers of Uber's luxury vehicle service UberBLACK in Pennsylvania were independent contractors.