Legal Update Article

U.S. Supreme Court to Consider Whether Airline Ramp Worker Meets FAA Transportation Worker Exemption

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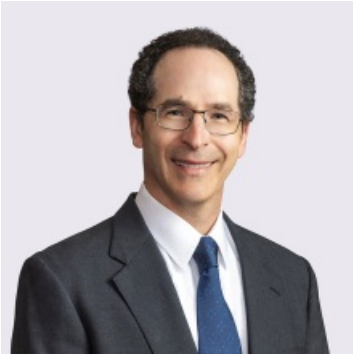

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Do an airline's ramp workers qualify as "transportation workers" exempt from the Federal Arbitration Act (FAA)?

The U.S. Supreme Court has granted an airline's petition for review to resolve this question. *Southwest Airlines Co. v. Saxon*, Docket No. 21-309.

The Court's holding will determine whether the workers will be able to pursue their overtime collective action in federal court or, rather, must arbitrate their claims on an individual basis pursuant to an arbitration agreement with their employer.

The transportation worker exemption excludes from FAA coverage "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1. In recent years, the exemption has emerged as one of the most significant issues in class action litigation, particularly as employers increasingly have adopted arbitration agreements with class and collective action waivers in an effort to rein in litigation costs and as wage and hour lawsuits have proliferated among employees and independent contractors who claim to fall within the exemption.

In the case at hand, a federal district court applied a narrow construction of the FAA exemption's residual clause. It found the exemption did not apply to a cargo ramp supervisor at Chicago's Midway Airport. The plaintiff alleged she regularly assisted her team of ramp agents in loading and unloading airplane cargo that was to be transported interstate. The district court held the employee had to pursue her wage claims in individual arbitration because the employee was not a "transportation worker." The U.S. Court of Appeals for the Seventh Circuit (which has jurisdiction over Illinois, Indiana, and Wisconsin) reversed in a March 31, 2021, decision, holding the transportation worker exemption applies. The Seventh Circuit reasoned that, even though the employee did not personally transport goods or people in interstate commerce, she was an essential link in the interstate commerce chain. (The U.S. Court of Appeals for the Fifth Circuit, which has jurisdiction over Louisiana, Mississippi, and Texas, reached the opposite conclusion in ***Eastus v. ISS Facility Servs., Inc.***, a 2020 case involving similar facts.)

As a result, Southwest's agreement to arbitrate with the employee was not subject to the FAA. However, the Seventh Circuit noted the arbitration agreement still might be enforced under state law. Southwest subsequently asked the district court to send the case to arbitration under Illinois law; that decision is on hold pending the Supreme Court appeal.

The Supreme Court has agreed to review the Seventh Circuit decision to decide "[w]hether workers who load or unload goods from vehicles that travel in interstate commerce, but do not physically transport such goods themselves, are interstate 'transportation workers' exempt from the Federal Arbitration Act."

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Last term, the Supreme Court denied review in two cases involving whether the exemption applies to "last-mile" drivers and "gig" food delivery drivers who travel only *intra*state, despite an enduring circuit split. The *Southwest Airlines* case involves purely stationary workers.

Please contact your Jackson Lewis attorney if you have questions about the scope of the transportation worker exemption or about the enforceability of arbitration agreements under the FAA.

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