

DoorDash Isn't the Only Company That Has Been Ordered to Conduct More Than 5,000 Individual Arbitrations – Postmates Has Been, Too

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Recently, [we wrote here](#) about a federal court order requiring DoorDash to conduct more than 5,000 individual arbitrations under the terms of its mandatory arbitration agreements, with each arbitration to address claims that it had misclassified its drivers as independent contractors.

The order would fall in the category of “Be Careful What You Wish For.” In seeking to avoid class or collective actions by having employees sign arbitration agreements with class action waivers, employers face the possibility of hundreds or thousands of individual arbitration for which they likely will have to foot the bill.

For those who thought the DoorDash decision was an aberration and that it was unlikely other companies would be ordered to conduct thousands of individual arbitrations, they may want to think again. It may not be an aberration at all — Postmates is facing a virtually identical situation.

Judge Sandra Brown Armstrong of the United States District Court in Oakland has [refused to stay her order requiring Postmates to conduct more than 5,000 individual arbitrations](#), which Postmates argued would require it to pay more than \$10 million just in arbitration filing fees.

Judge Armstrong rejected Postmates' argument that it would be too expensive for it to pay for more than 5,000 arbitrations. Like Judge William Alsup in the DoorDash case, she criticized Postmates for arguing that it should not be held to the terms of an arbitration agreement that it required drivers to sign.

She wrote: “Postmates' obligation to tender \$10 million in filing fees as a result of those arbitration demands is a direct result of [its own] agreement — which Postmates drafted and which Postmates required each courier to sign as a condition of working for Postmates. It strains credulity for Postmates to argue that the amount of filing fees due constitute irreparable harm when that ‘harm’ is entirely of its own making.”

From experience, we can tell you that the arbitration fees alone for an individual arbitration are typically about \$60,000. That does not include the attorneys' fees or potential exposure.

So if you assume that Postmates would have to pay \$60,000 in arbitration fees for each of the 5,000-plus individual arbitrations, the arbitration fees alone would be more than *\$300 million*.

It seems highly unlikely that Postmates would agree to pay such sums, and more likely that it will either try to find a way to appeal the order or resolve the claims on a classwide basis before the arbitrations commence.

Whatever happens next, and whatever the ultimate outcome, [Judge Armstrong's order should be read by all employers that have implemented arbitration programs or are considering doing so](#) because, like Judge Alsup's order in the DoorDash case, it succinctly demonstrates how employers must "be careful what they wish for" when it comes to such agreements.

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