

Arbitration Agreements for Independent Contractors in the Transportation Industry Under Fire

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The oral arguments on October 3, 2018, before the Supreme Court of the United States in *New Prime, Inc. v. Oliveira* have created waves of uncertainty in the transportation industry about the enforceability of arbitration agreements. The question before the Court is whether the Federal Arbitration Act's (FAA) requirement that courts enforce arbitration agreements applies to the huge contingent of independent contractors working in the transportation industry. Specifically, while the FAA has an exemption for "contracts of employment" for "workers" in the transportation industry, there is a dispute as to whether this exemption is limited to employees or is intended to encompass independent contractors as well.

Although *New Prime* tried to argue that the exemption for "contracts of employment" is limited to employees, several of the justices were openly skeptical of that position at oral argument. The justices appeared to find significance in Congress's decision to use the term "workers" as opposed to "employees" in drafting the FAA, as well as the historical reality that the difference between employees and independent contractors was not as well established or understood in 1925, when the FAA was written, as it is today.

Given the justices' seeming alignment with *Oliveira* at the oral argument, it is anticipated that the Supreme Court will ultimately issue a decision allowing truck drivers and others independent contractors in the transportation industry to avoid arbitration. Such a decision could force higher wages, thereby increasing costs for the transportation industry and its consumers.

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