

## Gig-Economy Delivery Couriers are Not Employees, New York Court Rules, Reverses Unemployment Board

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A delivery courier fired by app-based food delivery service Postmates Inc. is an independent contractor, not an employee entitled to unemployment insurance benefits, the Appellate Division, Third Judicial Department, of the New York Supreme Court, has ruled. *Matter of the Claim of Luis A. Vega*, No. 525233 (June 21, 2018). The case is one of many disputes across the country over the status of workers in the gig economy.

Luis Vega was a delivery courier for Postmates, which is known for its ability to deliver from hard-to-reach restaurants around Manhattan, Brooklyn, and Queens. Vega applied for unemployment insurance benefits after Postmates terminated its relationship with him based upon “alleged negative consumer feedback and/or fraudulent activity.” The Unemployment Appeal Board, reversing a decision by an Administrative Law Judge, found that an employer-employee relationship existed between Postmates and Vega. Contesting the Board’s decision, Vega filed suit on behalf of himself and others similarly situated.

The court, by a 3-2 vote, reversed the Board. The case turned on how much control the company had over the delivery couriers. The court found the company did not exert enough control over Vega or those similarly situated to be held liable for unemployment insurance contributions.

The majority found significant that, in order to work as a courier for Postmates, Vega and others similarly situated “need only download Postmates’ application software platform and provide his or her name, telephone number, Social Security number and driver’s license number; there is no application and no interview.” Further, they “were not required to report to any supervisor,” “they unilaterally retain[ed] the unfettered discretion as to whether to ever log on to Postmates’ platform and actually work,” and were “free to work as much or little as he or she want[ed] — there is no set work schedule.”

The panel concluded, “[W]hile proof was submitted with respect to Postmates’ incidental control over the couriers, the fact that Postmates determines the fee to be charged, determines the rate to be paid, tracks the subject deliveries in real time and handles customer complaints ... does not constitute substantial evidence of an employer-employee relationship.”

Jackson Lewis attorneys are available to answer inquiries regarding this case and other developments.

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