

## Closing Arguments Made at GrubHub’s Worker Classification Trial By Bonifacio Sison, J.D. Candidate 2020 | November 19, 2017

On October 30, 2017, closing arguments were made in front of a California federal judge by the lawyers representing the parties in the *Lawson v. GrubHub, Inc.* case. The [case](#) is over whether GrubHub improperly classified their meal delivery drivers as independent contractors. The defendant, GrubHub, is an online company that connects diners with local restaurants and offers food-ordering delivery services. The plaintiff, Raef Lawson, is an ex-GrubHub driver that alleges he was improperly classified as an independent contractor when he delivered food for GrubHub.

Under the *Borello* test, a court held that classifying workers as either 1099 contractor or a W-2 employee depends on a control test. The test analyzes the company’s regular business, the skill required, the payment method, and the supervision of the work performed. By classifying workers as independent contractors, GrubHub, along with other gig economy companies like Uber, Lyft, and Postmates, are able to cut overhead costs by not paying taxes, overtime, benefits, and workers’ compensation.

The trial hinged on the extent to which GrubHub had control over its drivers. The burden is on employers to demonstrate the proper classification of its workers. GrubHub [argued](#) that its drivers could log on and off when they wanted, accept shifts voluntarily, and had complete control over method of delivery. Moreover, GrubHub drivers could even choose to drive for competing companies at the same time.

According to Lawson, GrubHub’s policies required its drivers to pay for their car’s expenses, fuel, parking, and cellular data services. Because of these expenses, his weekly pay went below the state’s minimum wage, violating labor laws.

Lawson’s case is the first gig economy labor case to go to trial, and a judgment in Lawson’s favor could mean changes for the gig economy. Fearing potential litigation, many gig economies, such as Munchery and Instacart, have pre-emptively re-classified their workers from 1099 contractors to W-2 employees. One [analysis](#) estimated that for Uber to re-classify its drivers in California alone would cost over \$200 million.

A judgment is expected in the coming weeks and the industry will be watching closely. When presiding Judge Jacqueline Corley was asked how she will make her decision, she answered, “The tricky part is trying to fit in this gig economy to existing labor rules. It’s a unique situation that’s hard to figure out.”