
EMPLOYMENT - VIRGINIA

Amazon Logistics, Inc. v. Virginia Employment Commission

Court of Appeals of Virginia, Richmond - September 26, 2023 - S.E.2d - 2023 WL 6217816

Company appealed from decision of the Employment Commission finding that company owed unemployment insurance taxes for claimant, who was flex delivery driver, and for all similarly misclassified flex delivery drivers.

The Richmond Circuit Court affirmed the Commission's decision, and company appealed.

The Court of Appeals held that:

- As matter of first impression, once Commission proves that services are performed for remuneration, burden shifts to the putative employer to prove that the subject individual is not employee for unemployment insurance taxation purposes;
- Evidence supported Commission's determination that flex delivery driver for company was "employee," not independent contractor, for unemployment insurance tax purposes; and
- Commission did not err when it generalized claimant's experiences as flex delivery driver to all of company's flex delivery drivers.

Once the Employment Commission proves that services are performed for remuneration, the burden shifts to the putative employer to prove, by a preponderance of the evidence, that the subject individual is not an employee for unemployment insurance taxation purposes.

Evidence supported Employment Commission's determination that flex delivery driver for company was "employee," not independent contractor, for unemployment insurance tax purposes; evidence showed that company required flex drivers to comply with specific instructions on when, where and how delivery blocks were to be completed, that flex drivers had little control over when they worked, and that services performed by flex drivers were essential to and integrated into company's business model.

Employment Commission did not err when it generalized claimant's experiences as flex delivery driver to all of company's flex delivery drivers for purposes of determining if flex delivery drivers were employees, as opposed to independent contractors, for unemployment insurance tax purposes; evidence established a nexus between claimant's experiences and "terms of services" agreement governing company's relationship with flex drivers sufficient to support the Commission's determination that, because terms and conditions of the agreement applied equally to all flex drivers, company misclassified all such flex drivers, including claimant, for unemployment tax purposes.

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