US SUPREME COURT UNANIMOUSLY HOLDS STATE-LINE CROSSING NOT REQUIRED FOR FAA'S "TRANSPORTATION WORKER" EXEMPTION—KEY QUESTIONS FOR EMPLOYERS REMAIN

Date: 8 June 2026

US Litigation and Dispute Resolution Alert

By: Eugene C. Ryu, Erinn L. Rigney, Carter L. Norfleet

The US Supreme Court's (the Court) unanimous decision in *Flowers Foods, Inc. v. Brock*[1] closes the door on a significant employer-side arbitration argument, and it opens new uncertainty about which delivery workers remain outside the scope of the Federal Arbitration Act's (FAA) Section 1 "transportation worker" exemption (Section 1 Exemption).[2]

The *Flowers Foods* court held that a transportation worker who stays entirely intrastate but transports goods for the last mile of an interstate journey can qualify for the "transportation worker" exemption, rejecting a proposed bright-line rule that would have required a worker to cross state lines or interact with a vehicle that does.[3] As a result of this seminal ruling, employers who rely on arbitration agreements with last-mile delivery drivers, independent contractors, franchisees, or gig-economy workers should reassess those arrangements now.

BACKGROUND

On 28 May 2026, the Court issued its decision in *Flowers Foods*, addressing whether workers who deliver goods entirely intrastate—but whose goods traveled interstate—qualify for the Section 1 Exemption. The Section 1 Exemption prevents courts from compelling arbitration of disputes involving "contracts of employment" for transportation workers engaged in interstate commerce.

Angelo Brock, a franchisee of Flowers Foods, picked up the company's products from a warehouse in Colorado and delivered them to local stores.[4] All of Brock's pickups and deliveries occurred within the state of Colorado.[5] In 2022, Brock sued Flowers Foods in federal district court, alleging the company had underpaid him and other distributors in violation of various federal and state laws. Flowers Foods filed a motion asking the court to send the case to arbitration, arguing that Brock had signed a distribution agreement promising to arbitrate any disagreement between himself and the company.[6]

The district court denied Flowers Foods' motion, and the Tenth Circuit Court of Appeals (Tenth Circuit) affirmed. The Tenth Circuit reasoned that Brock "belonged to a class of workers engaged in interstate commerce," meaning the court lacked authority to compel arbitration.[7] The critical fact was that Brock's "intrastate route formed a constituent part of the... interstate journey" of the goods.[8] Flowers Foods petitioned the Court, asking the justices to instead adopt a bright-line rule that a transportation worker must transport goods across state lines or interact with a vehicle that does in order to qualify for the Section 1 Exemption to the FAA.

©2005-2026 K&L Gates LLP. All Rights Reserved.

THE COURT'S DECISION

The Court affirmed. Writing for a unanimous Court, Justice Neil Gorsuch rejected the proposed bright-line rule requiring a transportation worker to cross state lines or interact with a vehicle that does to fall within the Section 1 Exemption. Notably, this is the fourth time in recent years that the Court has addressed the scope of the Section 1 Exemption—and in each case, the Court has rejected efforts to limit its reach. For example, in *New Prime Inc. v. Oliveira*,[9] the Court held that the Section 1 Exemption's "contracts of employment" extend to independent contractors, not just employees. In another case, the Court held that an airline worker who loaded and unloaded cargo solely within a single state was engaged in interstate commerce and fit within the Section 1 Exemption. And in *Bissonnette v. LePage Bakeries Park St., LLC*, the Court again affirmed that a worker can fall within the Section 1 Exemption whether he or she is employed in the "transportation industry" or some other industry, so long as his or her work plays a "direct and necessary role" in the free flow of goods across borders.[10] The consistent direction of this line of authority has significant implications for companies who have relied on arbitration as a dispute resolution mechanism for delivery workers.

The Court centered its analysis on the definition of the terms "engage" and "interstate commerce." It reasoned that neither term requires the bright-line crossing-or-contact rule Flowers Foods proposed.[11] The Court offered a hypothetical with two scenarios to illustrate the point—one where a single driver takes goods directly across state lines, and another where three drivers split the same delivery, with only one crossing state lines. The Court stated it "cannot be right" that only the driver who crossed the state line actively engaged in interstate commerce, as each driver played a direct, active, and necessary part in the interstate journey.[12]

The Court further referenced several commerce clause cases, including *The Daniel Ball*,[13] which involved a steamer that operated entirely within the limits of Michigan and did not connect with any line of vessels or railway leading to other states, but was nonetheless held to be engaged in interstate commerce because it transported goods destined for other states.[14] The Court rejected Flowers Foods' argument that these cases applied only to the commerce clause and acknowledged that while Section 1 of the FAA is not coterminous with the commerce clause, cases using the same language as Section 1, or formulations very close to it, offer probative evidence of what an ordinary person at the time of the FAA's enactment would have understood its terms to mean.[15]

The Court reaffirmed the standard established in its prior precedent that a worker must play a "direct," "necessary," and "active" role in moving goods across borders—confirming that the Section 1 Exemption has limits, even if the crossing-or-contact rule is not one of them.[16]

QUESTIONS REMAIN

Flowers Foods resolves one question regarding the scope of the Section 1 Exemption while leaving several others open. While the decision establishes that last-mile delivery workers may qualify for the Section 1 Exemption without ever crossing state lines, it does not mean they always will. Notably, the Court declined to rule on whether operating through an independently owned company mattered for the Section 1 Exemption, or whether the worker's ordering, purchasing, and taking title to the goods prior to resale changed the analysis.[17] It noted that lower courts have found these facts relevant when considering the Section 1 Exemption's scope. However, because Flowers Foods did not ask the Court to decide the legal significance of those facts—choosing

©2005-2026 K&L Gates LLP. All Rights Reserved.

instead to stake its entire argument on the bright-line crossing-or-contact rule—the Court declined to analyze their implications on Section 1 Exemption eligibility.[18]

While the definition of "contract of employment" was not at issue, the Court discussed *Fli-Lo Falcon, LLC v. Amazon.com, Inc.*[19] and *Silva v. Schmidt Baking Distribution, LLC* [20] as examples of cases in which the structure of a contract of employment affected Section 1 Exemption eligibility. The Court also cited the First Circuit Court of Appeals' decision in *Immediato v. Postmates, Inc.,*[21] which held that intrastate delivery drivers fulfilling takeout food orders are not engaged in interstate commerce. However, the Court did not disturb these decisions, holding only that the crossing-or-contact rule is not a prerequisite for a Section 1 Exemption.

PRACTICAL CONSIDERATIONS

Companies who use arbitration to resolve disputes with last-mile delivery workers should not assume those agreements will be enforceable. *Flowers Foods* confirms that crossing state lines is not required to fall within the Section 1 Exemption. Further, the questions the Court left open—including how entity structure, title transfer, the structure of the contractual relationship, and operation through an independently owned company affect the analysis—create real exposure in circuits that have already split on these issues. Notably, the circuit courts remain divided on whether the Section 1 Exemption's "contract of employment" requirement is satisfied when the agreement is between two business entities rather than with an individual worker, meaning outcomes may vary significantly by jurisdiction. Employers should consider auditing existing arbitration agreements with delivery workers, franchisees, and gig workers and consult counsel to evaluate their arbitration programs in light of this decision and the open questions it leaves for the lower courts.

We acknowledge the contributions to this publication from our summer associate, Ryan Johnston.

FOOTNOTES

[1] No. 24-935, slip op. at 7 (U.S. May 28, 2026).

[2] 9 U.S.C. § 1 (exempting "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce").

[3] Flowers Foods, Inc., No. 24-935, slip. op. at 1-2.

[4] *Id.*

[5] *Id*. at 2.

[6] *Id.*

[7] *Id.*

[8] *Flowers Foods Inc.*, No. 24-935, slip op. at 2.

[9] 586 U.S. 105, 121 (2019).

[10] 601 U.S. 246, 256 (2024).

[11] *Flowers Foods Inc.*, No. 24-935, slip op. at 4.

©2005-2026 K&L Gates LLP. All Rights Reserved.

[12] *Id*. at 2.

[13] 77 U.S. 557, 557 (1870).

[14] *Flowers Foods Inc.*, No. 24-935, slip op. at 5.

[15] *Id*. at 6–7.

[16] *Id*. at 7.

[17] *Id*.

[18] *Id*. at 8.

[19] 97 F.4th 1190, 1197–98 (CA9 2024).

[20] 162 F.4th 354, 356–57 (CA2 2025).

[21] 54 F.4th 67, 72, 78 (CA1 2022).

KEY CONTACTS



EUGENE C. RYU
PRACTICE AREA LEADER - LITIGATION

LOS ANGELES, SAN FRANCISCO
+1.310.552.5035
GENE.RYU@KLGATES.COM



ERINN L. RIGNEY
PARTNER

CHICAGO
+1.312.807.4407
ERINN.RIGNEY@KLGATES.COM



CARTER L. NORFLEET
ASSOCIATE

LOS ANGELES
+1.310.552.5077
CARTER.NORFLEET@KLGATES.COM

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. Any views expressed herein are those of the author(s) and not necessarily those of the law firm's clients.

©2005-2026 K&L Gates LLP. All Rights Reserved.