

## **Despite Contract FedEx Drivers Are Employees, Not Independent Contractors**

FedEx Ground delivery drivers are employees, not independent contractors, under California's labor laws, the Ninth Circuit found, reversing a summary judgment for the delivery service.

The drivers filed suit for employment expenses and unpaid wages under the California Labor Code on the ground that FedEx had improperly classified the drivers as independent contractors. The case was consolidated with cases filed in 40 other states for multidistrict litigation (MDL) in Indiana. The MDL court denied all of the plaintiffs' motions for summary judgment, holding the plaintiffs were independent contractors. The MDL court remanded the cases to California, which entered final judgment. The appellate court reversed.

Under the FedEx model, the drivers are independent contractors not entitled to employee status. The appellate court acknowledged that, in finding the drivers are employees, not independent contractors, its "decision substantially unravels FedEx's business model."

While the case applies only to drivers in California, FedEx indicated it may appeal the decision. The business model used by FedEx is similar to models used elsewhere and therefore could affect other businesses who use independent contractors but dictate most of the rules under which they operate.

FedEx has entered into an operating agreement with its drivers. Under the operating agreement, the drivers are required to pick up and deliver packages within their assigned area each day, are required to own their own specialized trucks which must be painted a certain white color with FedEx logos, and must submit to ride-along inspections. FedEx argued that the drivers were given "flexibility and entrepreneurial opportunities that no 'employee' has." The appellate court found otherwise as a matter of law.

"Labeling the drivers 'independent contractors' in FedEx's Operating Agreement does not conclusively make them so when viewed in the light of (1) the entire agreement, (2) the rest of the relevant 'common policies and procedures' evidence, and (3) California law," the opinion states.

The appellate court noted that "FedEx was not entitled to 'write around' the principles and mandates of California Labor Law." The court observed that the FedEx contract was a "brilliantly drafted contract creating the constraints of an employment arrangement with [the drivers] in the guise of an independent contractor model – because FedEx not only has the right to control, but has close to absolute control over [the drivers] based upon interpretation and obfuscation."

*Alexander v. FedEx Ground Package System, Inc.*, Ninth Cir. No. 12-17458, issued August 27, 2014.