New York Joins Other States in Suing FEDEX for Misclassification of its Ground Division Drivers as Independent Contractors

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A year ago, the Attorneys General of New York, New Jersey, and Montana issued a joint statement that they intended to sue FedEx Ground for misclassifying drivers as independent contractors instead of employees. Now, the second of those two Attorney Generals has done so when New York Attorney General Andrew Cuomo recently filed a lawsuit against FedEx Ground on behalf of the State of New York.

The New York lawsuit was filed the same week as the Attorney General of the Montana, Steve Bullock, announced that his office settled its driver misclassification claims against FedEx Ground for $2.3 million. The New York lawsuit also follows by two months the filing of a similar misclassification lawsuit by the Attorney General of Kentucky, Jack Conway, and comes three months after the Attorney General of Massachusetts, Martha Coakley, settled its driver misclassification claims against FedEx Ground for $3 million.

Cuomo’s lawsuit (New York State v. FedEx Ground Package System, Inc.) was filed in the New York Supreme Court for New York County. It alleges that, by classifying its drivers as independent contractors, FedEx’s Home Delivery unit fails to provide its drivers the rights afforded to “employees” under New York’s labor laws, which includes the Unemployment Insurance, Workers Compensation, Wage Payment, and Overtime laws. According to the complaint filed in court, Cuomo alleges that “FedEx has the power to control, and does in fact control, almost all aspects of its drivers’ work” including “hours, job duties, routes, and even clothing.” There are reportedly over 700 drivers in the Home Delivery unit. (Click “More” for “Takeaway” below)

Unlike FedEx’s Ground Division, its Express Division treats its drivers as employees, affording them rights under the state and federal labor laws.

Over sixty class action cases have been brought against FedEx Ground under state and federal laws; many of those cases have been consolidated in a federal court in Indiana. While FedEx Ground has won some important court battles in the past two years, it has lost a number including a California class action case in which it was required to pay $30 million in damages and legal fees.

FedEx Ground also defended itself against an IRS audit over the misclassification issue. Within the past year, the IRS withdrew a $319 million citation against FedEx Ground for unpaid federal employment taxes, penalties, and interest under the “safe harbor” provisions of the Revenue Act of 1978. That “safe harbor” provision would be eliminated if Congress passes the “Fair Playing Field Act of 2010.” Another independent contractor bill, the Employee Misclassification Prevention Act, is currently pending in Congress. Eighteen states have passed laws cracking down on independent contractor misclassification in the past three years.

Takeaway: The New York lawsuit against FedEx Ground further demonstrates that misclassification has substantial legal consequences. Regardless of the outcome of the New York case, defending enforcement actions and class action lawsuits is costly. FedEx’s experience has led many companies, which utilize the services of a significant number of independent contractors, to take proactive steps designed to enhance independent contractor compliance. Those steps are discussed by the author in an article found at [page]