



Wood LLP

Tax Alert



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FedEx Misclassified Drivers As Independent Contractors, Rules Ninth Circuit

[FedEx](#) is everywhere. But a key component of how it does business has been upended by the Ninth Circuit Court of Appeals, which ruled that 2,300 FedEx Ground drivers were misclassified. For years, FedEx called them—and paid them—as independent contractors. No way, said the court resoundingly, *they are employees*.

Employees trigger a litany of federal and state tax withholding, fringe benefit, anti-discrimination, health care, pension, worker's compensation and unemployment insurance obligations. You avoid these entanglements by hiring [independent contractors](#) or do you? If they are really independent contractors, sure, but labels aren't enough.

Disputes are common, and independent contractor vs. employee cases have factual and legal nuances galore. So how clear is the FedEx case? "[We hold that plaintiffs are employees as a matter of law under California's right-to-control test.](#)" As a result, FedEx may owe its workforce of drivers hundreds of millions of dollars.



Image via Wikipedia

Is this case about a little overtime? Hardly. FedEx avoided health care, workers compensation, paid sick leave and vacation, retirement and more. FedEx made drivers pay for their uniquely FedEx branded trucks, FedEx branded uniforms, and FedEx scanners. Plus, fuel, insurance, tires, oil changes, maintenance, even workers compensation coverage.

Add in missed meal and rest period pay, overtime compensation, and penalties. Some “independent contractors” even had to pay wages of employees FedEx Ground required them to hire to cover for them if they were sick or needed a vacation, to help out during the Christmas rush!

[*Alexander v. FedEx Ground*](#), covers employees in California from 2000 through 2007. There will be a flap about this case not only at FedEx but across the package delivery and transportation industries. Many trucking companies use a similar “model,” calling—and paying—their drivers as independent contractors. How about taxis, Uber, Lyft, and others?

FedEx Ground has defended its so-called independent contractor model fervently, vigorously and in just about every other way. The drivers are in business for themselves, claims the delivery giant. And while other cases have chipped away at pieces of the FedEx empire, this is a decisive one. The court’s finding that these 2,300 drivers are covered by California’s workplace protection statutes could impact dozens of other FedEx cases across the country.

The worker status issue can come up almost anywhere. Some employers find it surprising that workers who sign contracts as independent contractors can still sue claiming they are employees. Yet the tax law, labor and employment law, discrimination, pension, and workers compensation laws are all clear that a contract doesn't bind this issue. It's that important.

From drivers to salespeople, custodians to lawyers, couriers to facialists, mercenaries to programmers, and newscarrriers to scientists, there's no one-size-fits-all solution. The IRS cares, and so do state tax and labor agencies, workers compensation and unemployment insurance authorities and more. All of them scrutinize the [status of workers](#).

It even matters under [Obamacare](#). Independent contractors aren't covered, assuming their status is legitimate. A central precept is that one can tell the difference between employees and independent contractors. The IRS is active in reclassification efforts and [more scrutiny is coming](#). The FedEx case is a good reminder that no matter how you label someone, the [substance of the work relationship](#) will control.

Contact me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.