

18 of 27 FedEx cases to continue

Contractors disputing employee status, benefits

By Jane Roberts (Contact), Memphis Commercial Appeal
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A federal judge has ruled that half of the state cases against FedEx Ground's independent contractor model may go forward as class-action suits, including a suit filed in Memphis.

Judge Robert Miller of the U.S. District Court in northern Indiana ruled that 18 of 27 cases may go forward, creating a case that could include 12,000 or more past and current drivers, according to a plaintiff lawyer's estimate.

Drivers in nine states, including Mississippi, did not meet the criteria for class-action status. A ruling in nine other states is still pending.

The ruling does not determine the classification of the workers, nor does it have any impact on FedEx's contractor model or agreements the company has with about 15,000 independent contractors.

"Their right to pursue independence and economic opportunity is now being threatened by efforts on behalf of a few that will jeopardize the future of the majority," said Maury Lane, FedEx spokesman.

The issue is whether the contractors are really employees who are due the benefits that employers by law must give employees, including insurance and disability.

FedEx pays the drivers per delivery, and although it doesn't say how much, it says that the vast majority of FedEx Ground and Home Delivery drivers are happy with the system, which gives the company a flexible work force and thousands of entrepreneurial-minded people a way to profit from FedEx's success.

FedEx Ground is the company's most profitable division. In the quarter ended Feb. 28, revenue was up 13 percent and volumes in its Home Delivery sector were up 15 percent.

Since the first suit was filed in 2001, about 200 drivers -- overwhelmingly single-route owners -- in 35 states have followed suit, saying the operating agreements they signed with FedEx did not adequately portray their working conditions or pay.

"They had reason to think they would be allowed to earn profits as independent contractors based on the model in place when they signed on," said Chris Gilreath, Tennessee plaintiff's lawyer. "Then the model changed. FedEx dictated the terms, including their hours, what packages they delivered, where and in what order."

Lane said: "Mr. Gilreath speaks as if the merits of the MDL cases have been heard, ruled on by the judge, and are no longer in dispute. That is not true. The facts of the case have not yet been decided, and any suggestion to contrary is inaccurate."

In Tennessee, five plaintiffs, all former drivers, are suing for \$50,000 in expenses, including truck maintenance.

While the class-action case is nowhere near a record size on numbers of employees alone, the fact that each is suing for around \$60,000, Gilreath said, makes the case important.

The first fissure appeared in 2001 when a driver filed suit in California. An appellate court there last year ruled that the 200 drivers in the case were employees and were owed \$5.3 million in truck-maintenance expenses.

FedEx appealed to the California Supreme Court, saying it disagreed with the way the expenses were calculated.

But before the state's Supreme Court rejected the company's appeal in November, FedEx offered its single-route drivers in California incentives to form companies with multiple routes, paying incentives starting at \$25,000.

At the time, it had 1,200 independent contractor drivers in the state; 750 owned single-truck routes.

In January, the IRS joined the fray, saying it was considering assessing FedEx \$319 million, plus interest, for back taxes not paid to its independent contractors for 2002.

FedEx "vigorously defended" its position, saying it continued to believe the owner-operators were independent contractors and that no loss was probable.

It also said it would meet with the IRS this spring to discuss the matter.

"The contractor model is very important for FedEx," Gilreath said. "They very much want to keep it if they can, and they are fighting hard for it."

Critics have said the single-route drivers are most vulnerable because if anything goes wrong with their health or vehicle, for instance, they have to pay for replacements.

Last week, FedEx said it was "very pleased" with the results of the California transition and that it had "achieved overwhelming acceptance" from the single-route contractors in their move to multi-route contractors.

The company has not said if it plans to consolidate its single routes across the nation.