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Judge Delivers Order to FedEx: Pay Misclassified Drivers

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Petra Pasternak, The Recorder

In a decision expected to spur wage-and-hour suits in the courier industry, a judge earlier this month ordered FedEx to pay \$5.3 million to a group of drivers he found had been improperly classified as independent contractors. He also ordered FedEx to end the practice, instructing the company to provide drivers with a copy of his Dec. 19 order.

Los Angeles County Superior Court Judge Howard Schwab said FedEx had violated California law by classifying all of its single-route drivers as independent contractors and forcing them to incur expenses the company should have covered, including paying for fuel, oil, tires, repairs and liability insurance. The judge ordered payments ranging from a few hundred dollars to as much as \$98,000 for about 200 class members. The case was tried over nine weeks last year.

Lead plaintiff attorney Lynn Faris and her firm, Oakland, Calif.'s Leonard Carder, were awarded \$12.3 million in attorney fees.

"[The decision] has very broad national implications for a big company that has chosen to do business in a way that is inconsistent with California law," Faris said.

FedEx drivers have leveled similar claims in a series of 32 suits, filed in 25 states, which are now consolidated in an Indiana courtroom.

"The court listened to nine weeks of testimony at trial. The judge in Indiana will certainly be influenced by this testimony," Faris said.

Faris said she expects the ruling to up the ante on the courier industry, whose employment classification arrangements have attracted increasing scrutiny from state regulators and the attorney general's office over the past few years.

In response to complaints that courier companies have released hourly workers and then hired them back as contractors who are paid to deliver packages using their own vehicles, the state Employment Development Department has said it plans to audit an additional 450 delivery companies by July.

Lawyers representing FedEx in the suit didn't return phone calls seeking comment Wednesday. But FedEx spokesman David Westrick said the company plans to appeal. "We firmly believe that the 14,000-plus men and women we have around the country understood the terms of the contract when they signed it," he said.

In court, FedEx has argued that while it sets work rules for some contractors, they aren't employees because they don't have set start times, they can hire and fire workers, they use their own vehicles, and they choose their own routes.

Aaron Kaufmann, a plaintiff-side employment litigator at Hinton, Alfert & Sumner in Walnut Creek, expects the outcome in the FedEx case to send a "strong message" to employers using similar labor models, particularly FedEx competitors. Kaufmann said he's handling similar suits and expects more to roll in.

"I would anticipate that there would be a wave of litigation challenging the misclassification of workers as independent contractors."

The Los Angeles County Superior Court suit, *Estrada v. FedEx Ground*, BC 210130, was filed in 1999 by three California contract drivers alleging violations of the state wage-and-hour regulations, and was later certified as a class action.

Schwab told the company it has until April 5 to comply with the order to stop mislabeling workers.

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