

[NewStandard Home](#) [Non-Printer Version](#) [More Work and Money Articles](#) [Browse Archive](#)

FedEx Drivers Fight for 'Employee' Status, Rights

by Megan Tady

Long denied the protections and benefits of employment, "independent contractors" on whom the shipping company has imposed an "entrepreneurial spirit" say they've had enough hampered independence.

July 18 – Jerry Ferguson realized early on that he did not have much say in how he ran his own business.

As an "independent contractor" for FedEx, Ferguson was in charge of two delivery routes for nearly five years in Pasadena, California. Like the other independent contractors who deliver packages for FedEx, Ferguson was told by the company he could maintain his autonomy by owning his own delivery business, rather than becoming a company employee.

But while Ferguson had to supply his own trucks, buy his own gasoline, and hire and pay an employee to help run his route, his business was anything but his own. According to Ferguson, FedEx told him when and how to work, from wearing a mandatory company uniform to restrictions on driving his own trucks – bearing required FedEx logos – on his days off.

"I had no control," Ferguson told *The NewStandard*.

Although Ferguson was required to follow all of the company's rules, he received none of the benefits that other employees receive. When FedEx eventually terminated his contract, Ferguson was ineligible to receive unemployment benefits until a California labor board ruled that he had been misclassified as an independent contractor and should receive the full benefits of an employee.

Meanwhile, other independent contractors for FedEx are deciding they also have gotten a raw deal. A national class-action lawsuit with hundreds of plaintiffs from 30 states was filed in 2005 against FedEx Ground alleging that workers were misclassified as independent contractors.

Other cases against FedEx have already been filed and won. In June, a California Employment Development Department audit found that FedEx Ground owes the state at least \$7.8 million in back employment taxes because contracted drivers were misclassified. In February, the National Labor Relations Board ruled that 23 FedEx drivers in Worcester, Massachusetts could join a union because they were employees of the company, and not independent contractors as previously classified.

FedEx is a \$29 billion network of companies. The company's website boasts 226,000 "employees, contractors and team members" and that all of FedEx's delivery drivers are treated as independent contractors.

Robert Boulware, a spokesperson for FedEx, told *TNS* that the company chose the independent-contractor model because it "mirrored the entrepreneurial spirit of the

management team" and that contractors have a "real stake in the business."

The FedEx workers' experience is not unique, but part of a widespread trend in which companies misclassify workers as independent contractors, allowing employers to avoid making contributions to Social Security, unemployment insurance, workers' compensation and health insurance. Independent contractors are also not extended protections under labor and employment law, and they cannot form or join unions.

"It makes [workers] responsible for a whole range of things that normally an employer should provide," said Suren Moodliar, coordinator for the North American Alliance for Fair Employment (NAFFE). "In effect, [independent contractors] are responsible for their own exploitation."

According to the International Revenue Service, an independent contractor is classified as a worker who has the right to control the "means and methods" for accomplishing a task. The IRS requires that businesses assess behavioral control, financial control and the type of worker-employer relationship itself before classifying someone as an independent contractor. Businesses that are found to have misclassified independent contractors can be forced to pay employment taxes for that worker and incur a penalty charge.

A 2005 Harvard Law School examined the misclassification of workers in the construction industry found that, between 1999 and 2002, at least one in seven construction employers in Maine misclassified workers as an independent contractor.

Other sectors where misclassification commonly occurs include the taxi, trucking and computer industries.

Moodliar said an anti-worker culture has many businesses using and abusing independent contractors.

While businesses have their own reasons for hiring independent contractors, workers are often lured into the contracts with false promises of running their own show. FedEx's independent contractor recruitment website tells people they can "partner" with the company and asks, "Have you ever dreamed of running your own business?"

"Initially, there might be some attraction to think that you're your own boss," Moodliar said. "But in the end, they'll see that they don't have any protections."

© 2006 *The NewStandard*. All rights reserved. The NewStandard is a non-profit publisher that encourages noncommercial reproduction of its content. Reprints must prominently attribute the author and The NewStandard, hyperlink to <http://newstandardnews.net> (online) or display newstandardnews.net (print), and carry this notice. For more information or commercial reprint rights, please see the TNS [reprint policy](#).