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UPS loses ruling on contract workers

By Rachel Osterman -- Bee Staff Writer

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In a case that tested independent contractor arrangements, a Sacramento judge has ruled that a division of UPS Inc. should have classified its drivers as employees, which would have entitled them to disability and other payroll benefits.

The legal fight has consumed years and has been fought by two different companies. The case began in the early 1990s when the drivers worked for Air Couriers International. The company, which later changed its name to SonicAir, was acquired by UPS in 1995.

The contractor arrangement was challenged after an Air Couriers driver applied for disability insurance benefits. Officials from the Employment Development Department discovered that he wasn't initially covered because of his status as an independent contractor.

However, a subsequent audit by the EDD determined that he and other drivers should have been classified as employees, entitling them to payroll benefits such as disability and unemployment insurance.

"The victory here is for protecting workers," said Steven Green, a lawyer for the state attorney general's office who argued that the EDD should not have to refund UPS the \$620,000 it paid in fines, missed insurance and income tax deductions. "It's implausible to think the workers understood that by signing these contracts they were giving up their disability and unemployment insurance benefits."

A UPS spokesman said it was too early to tell whether the company would appeal the decision or whether it would convert the 200 California drivers for its logistics subsidiary into employees. UPS SonicAir employs about 900 drivers nationwide.

"Drivers are paid by the job. And each driver has executed a contract stating that they are accepting work as an independent contractor," said spokesman Norman Black. "When you put all of those things together ... the drivers are independent and are not UPS SonicAir employees."

In the sporadic logistics business, independent contractor arrangements have proliferated because it's hard to predict the next day's workload, Black added.

Under state and federal law, independent contractors are supposed to be self-employed businesspeople. The companies that hire them are not required to pay unemployment or disability insurance, nor do they pay into workers' compensation or other payroll taxes.

But state regulators assert that many people classified as independent contractors are

treated as employees, and should be labeled as such.

In the courier industry alone, the state has found that 12,600 drivers have been erroneously classified as independent contractors since 2004, said Walter Branam, who is helping lead an independent contractor compliance initiative for the EDD. The construction and technology industries are considered other hotbeds.

In the UPS case, Judge Patricia C. Esgro ruled that the company controlled drivers' day-to-day work, fitting one legal definition of employee.

"Regular schedules and daily routes are entirely consistent with employee status," she said.

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