

Delivery drivers sue boss

Fight indie status, fees

By Donna Goodison | Wednesday, May 28, 2008 | <http://www.bostonherald.com> | Business & Markets

Drivers for Publishers Circulation Fulfillment Inc. have filed suit claiming the newspaper distributor misclassifies them as independent contractors, illegally deducts money from their pay and charges fees to collect and remit their tips.

The proposed class-action lawsuit, which also asserts that PCF refuses time off for serious health issues, claims that drivers' take-home pay is sometimes less than minimum wage after various fees and charges are deducted.

Maryland-based PCF distributes 11 million-plus copies of the nation's newspapers to homes and offices each week. Local newspapers that use its service include the Boston Herald, Boston Globe, MetroWest Daily News and Patriot Ledger.

Misclassifying workers as independent contractors rather than employees is a growing problem across the country, according to Boston attorney Harold Lichten, who filed the suit last week in Massachusetts District Court. His law firm, which is representing Framingham-area PCF drivers Fernando de Souza, Warly Barbosa Jr. and Israel Oliveria, is involved in similar suits on behalf of FedEx and oil delivery drivers, and several franchised cleaning companies.

"What company wouldn't give their eyetooth not to pay workers compensation insurance, unemployment insurance, health benefits, their share of the payroll taxes, etc.?" Lichten said. "It gives them quite a competitive advantage in the marketplace."

The state Attorney General's Office issued an advisory this month to educate employers about Massachusetts' independent contractor law. The law states that an individual performing any service for a company is considered an employee unless he is free from control and direction in his performance; the service is performed outside the usual course of the employer's business; and the individual is engaged in an independently established occupation or business of the same nature as the service.

The PCF drivers perform a service - newspaper delivery - that is the core function of the company, Lichten said. "They clearly fall on the side of being employees because PCF controls everything that they do," he said.

PCF declined comment. If the court approves class-action status, the lawsuit could apply to some 500 PCF drivers in Massachusetts.

The suit also contends that PCF deducts \$5 from driver's checks for each newspaper that, according to subscriber complaints, is not delivered or is damaged. It also alleges that PCF charges drivers a 2 percent fee for each tip received from newspaper subscribers paying PCF bills by credit card.

Article URL: <http://www.bostonherald.com/business/general/view.bg?articleid=1096864>