

## FedEx Cited For Misclassifying Mass. Drivers

*12/19/2007* --- In what is a major blow for FedEx as it battles lawsuits by its legion of drivers across the U.S., the Massachusetts attorney general announced on Wednesday that the company violated state law by misclassifying the workers as independent contractors.

Hailed by lawyers representing thousands of drivers as a significant breakthrough in their fight, the decision to find FedEx in breach of the Massachusetts' Independent Contractor Law and to slap the company with a \$190,000 fine could prove a significant setback for the company. FedEx is currently trying to block attempts to certify classes in the multidistrict litigation.

Boston-based plaintiffs' lawyer Shannon Liss-Riordan, who represents FedEx drivers in the litigation in Indiana, said Massachusetts is the first state to make a move against FedEx, setting the stage for other states to follow its lead.

"We think this is very significant because we hope and expect that other state attorneys general will follow suit," she said. "FedEx has been engaged in a national scam for a long time of pretending that its workforce are individual contractors when they are in fact workers."

"It's an exciting step that an attorney general is stepping into the fray and citing FedEx for this blatant violation," she added.

Attorney General Martha Coakley said FedEx had been cited for numerous breaches, including failing to provide workers' compensation, failing to pay overtime and withholding state income taxes. The state ordered FedEx to provide restitution to the 13 drivers at issue.

"Our office places a high priority on the proper classification of individuals in the workplace," Coakley said in a statement. "The practice of misclassification does great harm, not only to misclassified workers and to the commonwealth in the form of lost revenues but also by putting law-abiding businesses at a disadvantage."

FedEx spokesman Maury Lane said the company would appeal the decision. An appeal would be heard by the state's Division of Administrative Law Appeals.

"We've cooperated with the state attorney general's office since 2005 and no concerns were raised about our business practices," Lane said. "The average single-area work contractor in Massachusetts makes \$85,000 a

year, so something is askew here.”

“Working for yourself or owning your own business should not be against the law in Massachusetts or any other state and unfortunately this decision sends that message,” he added.

The state launched an investigation six months ago in response to a driver's complaint. The attorney general's office said the probe revealed FedEx had violated the Independent Contractor Law by directing and controlling the activities of drivers and limiting their ability to contract for other companies.

“By misclassifying the drivers, FedEx Ground deprives their drivers of health care benefits, access to unemployment insurance, workers' compensation benefits and, in some cases, overtime pay,” the office said.

Under Massachusetts case law, the courts were deferential to the attorney general's interpretation of wage-and-hour laws and the decision to cite FedEx would not go unheeded by the court, said Shannon Liss-Riordan of Pyle, Rome, Lichten, Ehrenberg & Liss-Riordan PC.

The Indiana district court has already certified a national class of ERISA plaintiffs and a state law class of Kansas drivers. Liss-Riordan, who represents drivers in Massachusetts, Connecticut and Vermont as part of the multidistrict litigation, said plaintiffs lawyers are working to certify some 30 more state classes and a national class of drivers seeking overtime.