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Suit Claims FedEx Is Retaliating Against Mass. Drivers

By **Ben James**

Law360, New York (August 04, 2010) -- A recently announced decision to end FedEx Ground Package System Inc.'s business model in Massachusetts constitutes unlawful retaliation against drivers for bringing litigation over their classification as independent contractors, a putative class action filed Wednesday alleges.

The lawsuit was filed on behalf of named plaintiffs and FedEx Home delivery drivers Steven Hayes and Chris Johnson in Massachusetts Superior Court.

On July 15 — the same day Massachusetts Attorney General Martha Coakley announced that FedEx Ground would cough up \$3 million to settle claims that it misclassified its drivers as independent contractors — drivers were called into mandatory meetings and shown a video about FedEx's "ISP transition," the complaint said.

FedEx is giving the drivers three options. One of those is to pursue an independent service provider agreement, which requires a driver incorporate their business and purchase three work areas, among other things. Many drivers who opt to go down that road will have to take out loans to buy trucks and work areas, the complaint says.

The second option is to seek employment with an ISP, which essentially means losing one's job with FedEx, according to the complaint.

The last option is to stop working for FedEx entirely, the complaint says.

The transition to an ISP model will translate to a loss of employment for many, if not most, FedEx drivers, the plaintiffs claimed. FedEx launched the transition in response to the legal actions taken against it by Massachusetts drivers over the classification issue, the plaintiffs further asserted.

The change means that FedEx is terminating all its single-route drivers as of October, according to Shannon Liss-Riordan, the attorney who signed the complaint.

"FedEx needs to face up to the fact that its drivers are employees and not independent contractors," Liss-Riordan said. "Now that it's becoming clear that the drivers are in fact employees, they're taking an action that is essentially going to put these drivers out of work."

The complaint asks the court for class action certification, injunctive relief barring the ISP transition from being implemented and unspecified damages.

The proposed class would cover all individuals currently working as drivers in Massachusetts for FedEx Ground Package System or FedEx Home Delivery as pickup and delivery drivers and who will be harmed by the ISP transition.

A FedEx representative did not immediately respond to a query about the lawsuit Wednesday evening.

FedEx also has faced a slew of lawsuits in recent years over alleged misclassification. Multidistrict litigation over the issue has been pending in the U.S. District Court for the Northern District of Indiana since 2005.

The plaintiffs in the suit filed Wednesday are represented by Lichten & Liss-Riordan PC.

The case is Steven Hayes and Chris Johnson v. FedEx Ground Package System Inc. and FedEx Ground Package System Inc. d/b/a FedEx Home Delivery in Massachusetts Superior Court. The case number was not immediately available.