

BANGOR DAILY NEWS

Maine FedEx drivers sue over employment status

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A group of eight people who worked as delivery drivers for FedEx affiliates in Maine have filed a class-action lawsuit, saying they were misclassified as independent contractors when they were actually full-time employees.

Attorneys for the drivers filed suit Thursday in U.S. District Court in Maine. The plaintiffs are all current or former FedEx Ground Delivery or FedEx Home Delivery drivers in Maine, according to the lawsuit.

A company spokesman said FedEx would defend its business practices, as it has done in similar cases.

Attorney Harold L. Lichten, who represents the group, said that those two FedEx divisions only use independent contractors for deliveries, nationwide. He estimated they have up to 10,000 such workers nationwide at any one time and between 100 and 120 in Maine.

The plaintiffs in the case include former drivers Wayne Scovil of Carmel, Christy Parsons of Orland, Duane Humphrey of Canaan and William Preble of Florida, as well as current drivers Kelley Nylund of Orrington, Clarence McMullen Jr. of Newport, Brent Bailey of Brownville and Henry Smith of Dexter.

Lichten said the lawsuit seeks to have current drivers classified as full-time employees and seeks past overtime and other compensation for all the plaintiffs.

By classifying someone as an independent contractor, an employer avoids having to pay social security, unemployment or payroll taxes or workers' compensation fees, said Lichten.

"Companies find this arrangement, if they can get away with it, extremely attractive," he said.

At the FedEx divisions, the workers had to buy or lease FedEx trucks, package-scanning equipment, uniforms, gas and insurance, and also couldn't collect overtime. Lichten said it was a competitive advantage for the FedEx divisions to operate this way.

However, if a business classifies someone as an independent contractor, it loses much control over that worker under the law.

"If you're an independent contractor, the key element is supposed to be you get to control the means by which you do something," said Lichten. "[The company] controls the end result."

The lawsuit alleges that the FedEx divisions “exert a high degree of control over the drivers’ work.” That includes the drivers’ ability to have others perform in their place. The drivers also couldn’t choose when, how and to what extent they would work for the company. Instead, the company would tell drivers approximately when they had to pick up their packages and deliver them.

Perry Colosimo, spokesperson for FedEx Ground, said in a brief statement that the company is aware of the Maine lawsuit “and will continue to defend our independent contractor business model as we’ve done in other cases.”

The issue of companies miscategorizing independent contractors has come up in numerous states, and the federal government is also taking an interest, said Lichten. He noted that attorneys general in Massachusetts, Kentucky and New York all have filed suits against FedEx over the issue.

On Tuesday, a federal judge in Indiana ruled in favor of FedEx Ground in the company’s dispute with drivers over whether they are independent contractors. In a 182-page decision, Judge Robert L. Miller Jr. said several factors favored independent contractor status. More than 50 lawsuits had been filed by the drivers and were consolidated into a single federal court case.

The Associated Press contributed to this report.