



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE  
LABOR BUREAU

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By facsimile and U.S. mail

Dear Mr. Conley:

You are hereby notified that the Attorneys General of New York, Montana, and New Jersey intend to commence litigation against FedEx Ground Package System, Inc. ("FedEx") after October 27, 2009 in order to address widespread, long-term, and unlawful employment practices engaged in by FedEx. Specifically, we seek to remedy labor law violations resulting from FedEx's continued misclassification of its drivers as independent contractors rather than employees.

Our offices have examined the work done by FedEx drivers and have concluded that these workers are in fact employees of FedEx and are not simply independent contractors. We have reached this conclusion for several reasons, as set forth below.

As you are well aware, under FedEx's business model, the individuals who pick-up and deliver FedEx packages (with very few exceptions) are considered to be independent contractors rather than FedEx employees. In order to undertake FedEx pick-ups and deliveries, these drivers must agree to a "Pick-Up and Delivery Contractor Operating Agreement" (the "Operating Agreement" or the "Agreement") which governs the relationship between FedEx and the driver. The Operating Agreement sets forth FedEx's specifications and rules related to equipment and operations, vehicle operations, insurance, payments to drivers, service areas, and other aspects of package pick-up and delivery. There is no real bargaining over the terms of this Agreement; FedEx will not enter into any Operating Agreement that substantially deviates from FedEx's standard Operating Agreement form.

Moreover, notwithstanding FedEx's self-serving statement in the Operating Agreement that the "means of reaching [the business goals of FedEx and the drivers] are within the discretion of the Contractor," in fact, FedEx strictly controls all aspects of the work of drivers doing FedEx pick-up and delivery. Hours are strictly prescribed by FedEx; drivers have almost no discretion as to

what hours they work. Workers' performance of their tasks – from the loading of their trucks to their hand-off to customers – is directed and supervised by FedEx. Drivers' uniforms are mandated by FedEx, even down to the colors of drivers' socks. Drivers' opportunities to engage in non-FedEx related work are almost entirely constrained by FedEx rules. For example, drivers are only allowed to use their own trucks for non-FedEx purposes if the trucks are used outside of FedEx working hours. Additionally, the work of FedEx drivers is at the very core of FedEx's business activities; drivers are completely integrated into the overall business functions of the company.

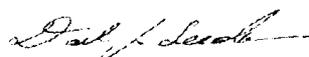
FedEx's illegal misclassification of its drivers has resulted in a serious injustice to more than a thousand FedEx drivers in Montana, New Jersey, and New York. As independent contractors, drivers do not receive Workers' Compensation coverage through FedEx. Moreover, independent contractors are not protected by anti-discrimination laws, labor relations laws, and other important laws that protect our states' workers. The drivers must also undertake significant expenses to perform their jobs in the manner required by FedEx. These expenses range from purchasing or leasing trucks for as much as \$70,000 to paying \$40 per week for the use of a FedEx uniform and scanner. Drivers must also purchase fuel and do required maintenance for their trucks.

Besides hurting FedEx drivers, FedEx's practices hurt the states of New Jersey, New York, and Montana when proper taxes are not paid. FedEx's practices also hurt other employers, which face unfair competition as a result of FedEx's illegal cost-cutting measures.

Because the issue of the treatment of workers in our States is vitally important, and because accurate reporting and accounting is vital to our respective employment-related functions, our offices intend to commence litigation against FedEx within five days of the date of this letter to address state labor law violations. In pursuing legal action, we also intend to seek restitution, damages, civil penalties, and other relief as authorized by state law.

If FedEx believes that it can demonstrate why litigation should not be commenced, it may communicate its position in that regard to us. Any such communication shall be furnished no later than October 27, 2009.

Very truly yours,



David Socolow  
Labor Commissioner  
State of New Jersey



Patricia C. Kakalec  
Deputy Bureau Chief,  
Labor Bureau  
State of New York



Jennifer Anders  
Assistant Attorney General  
State of Montana