

## FedEx's Independent Contractors: Is the Company Really Recruiting Employees?

The use of independent contractors by package delivery companies appears to be a good idea. The arrangement requires a contractor to purchase the appropriate vehicles, contract with a company that specializes in the delivery of packages, and complete delivery schedules on the basis of sound management approaches. The relationship ideally benefits both the delivery firm and the independent contractor because the company gets packages delivery without having to invest in and maintain the vehicles, while the contractor gets to run his or her organization based on individual preferences.

Unfortunately, one or both parties can end up feeling slighted in this arrangement because of various control and monetary frustrations. By definition, independent contractors are not covered by certain employment laws and do not receive some benefits, but the loss of such protections are usually acceptable because the independent contractor operates as a separate business entity. However, when a delivery company starts to directly supervise an independent contractor's work, the lines between "contractor" and "employee" become blurred. It is easy to understand why an independent contractor would want to be considered an employee, and be entitled to important benefits and protections if control of the contractor's business is effectively being surrendered to the delivery company.

FedEx has for some time utilized a multitude of independent contractors, many of which are single-driver/single-vehicle outfits, to augment its delivery services, and the company has enjoyed many successes using this business model. Contractors must

pass basic pre-employment tests (physical/drug screenings), be good drivers with acceptable records, and possess an appropriate vehicle for deliveries. Drivers must also sign a nonnegotiable contract that specifies the nature of the working relationship with FedEx. The agreement sets forth fairly strict standards with regard to appearance and vehicle maintenance/operation (i.e., drivers cannot use vehicles for personal use with the FedEx logo displayed), but the company does not specify how the deliveries are completed (i.e., routes, hours of operation, etc.). Contractors are generally expected to work Tuesdays through Saturdays, and up to 60 hours within a typical workweek, and drivers must complete a training program that includes both classroom instruction and practical driving exercises. Drivers are assigned a delivery area or region, which can be changed with sufficient notice, and provisions are specified in the contract about support for delivery volume (too much and too little). Pay is provided on factors such as delivery numbers, types of deliveries, and safety record.

Given these requirements, as well as the stringent working conditions that independent contractors must endure working with FedEx, drivers have looked for support from unions and lawyers, or have established drivers groups, in an effort to get recognized as legitimate employees of the company. These concerns have also led to many lawsuits directed at FedEx. Based on these problems, it may be that FedEx needs to revise its agreement so that independent contractors don't feel like they are employees of the company.<sup>70</sup>