



## News & Updates

### **NINTH CIRCUIT RULING ON MISCLASSIFICATION OF INDEPENDENT CONTRACTORS HAS MAJOR RAMIFICATIONS FOR EMPLOYERS**

In *Alexander v. FedEx Ground Package System, Inc.*, 2014 U.S. App. LEXIS 16585 (9th Cir. Aug. 27, 2014), the Ninth Circuit Court of Appeals held that former Federal Express drivers were employees rather than independent contractors pursuant to California's right-to-control test. This important decision is likely to reach across all industries and will cause regulators and attorneys to closely examine independent contractor agreements to determine if the employer retains sufficient direction and control over the manner or means by which the work is to be performed. This case teaches that no matter how workers are labeled by the employer, the substance of the work relationship is what controls the classification status.

The right-to-control test focuses on whether the person to whom service is rendered has the right to control the manner and means of accomplishing the desired result. The Ninth Circuit ruling applies to over 2,300 drivers who are parties to two class action lawsuits.

The plaintiffs in *Alexander* argued that FedEx improperly classified its drivers as independent contractors, thus depriving them of employment expenses and wages that they would have been entitled to under California law. The court noted that although the operating agreement that governed FedEx's relationship with its drivers purported to leave discretion to the drivers as to the hours they worked, their routes and other details of their performance, the agreement required drivers to pick up and deliver packages within their assigned areas, required them to make deliveries every day that FedEx was open, and required all packages to be delivered on its assigned day.

FedEx also assigned drivers work, expected them to work during certain periods, maintained control over their service areas, trained them to do their jobs and interact with customers, and undertook performance evaluations. In addition, FedEx imposed mandatory safe driving standards and requirements as to the appearance of the vehicles, equipment and the drivers, including requiring drivers to wear a uniform. Based on these factors, the court ruled that FedEx controlled the manner or means by which the work was performed and, thus, that the drivers were employees.

The distinction between employees and independent contractors is important because employers avoid federal and state tax withholding, health care benefits, retirement benefits, vacation, paid sick leave, worker's compensation, unemployment insurance, and the application of anti-discriminations laws when workers are classified as independent contractors.

Employers are reminded to spend time reviewing worker status in order to prevent the risk of litigation. Proper classification is key.

For more information about how this ruling may impact your business, please contact:

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#### **Files**

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