



Via Electronic Mail

November 10, 2010

National Conference of Insurance Legislators
c/o Jordan Estey, Director of Legislative Affairs & Education
385 Jordan Road
Troy, NY 12180

Re: *Teamsters Union Comments to Proposed Trucking and Messenger Courier Industries Workers' Compensation Model Act*

Dear Mr. Estey:

FedEx Ground Package System, Inc. (FedEx Ground) commends the National Conference of Insurance Legislators (NCOIL) for its efforts to alleviate the uncertainty surrounding worker misclassification through its well-considered "Proposed Trucking and Messenger Courier Industries Workers Compensation Model Act" ("Model Act"). For the record, we stand with the American Trucking Associations (ATA) and its 37,000 members in supporting the Model Act. The ATA has thoroughly reviewed the model legislation in light of the interests of the trucking and messenger courier industries and believes the proposed seven-factor test satisfactorily addresses the issue of worker misclassification.

One of the few adversaries of the proposed legislation is the Teamsters union, which submitted its written objections to the Model Act on April 23, 2010. In making its case, the Teamsters union cited FedEx Ground as an example of a company that "intentionally misclassifies" its work force and for which the proposed seven-factor test would be inadequate to ensure compliance with the law. We are compelled to correct the record with respect to the gross mischaracterizations of FedEx Ground's history of compliance with the law and its long-standing working relationship with thousands of independent contractors.

The transportation industry has a long history of working with independent contractors. For more than 25 years, FedEx Ground has successfully and legally contracted with thousands of independent businesses across America to provide pickup and delivery services. We enter into contracts with entrepreneurs who want the flexibility to run their own businesses in association with a powerful brand. Under these operating agreements, contractors have the sole responsibility for their businesses and make operational and management decisions, without mandates from FedEx Ground.

The independent businesses that contract with FedEx Ground look nothing like employees. They own or lease their delivery vehicles and equipment and manage the day-to-day operations of their businesses. They determine the exact start or end time to their work day and they do not punch a time clock. FedEx Ground and its contractors interact in ways that are compliant with government

regulations and ensure top quality service for our mutual customers. But FedEx Ground does not control how the contractors or their employees perform the work.

Like other small businesses, contractors hire and supervise their own employees to help them provide services; in many cases, they own multiple work areas and employ a team of drivers and helpers to service their needs. The contractors also have the opportunity to build and sell businesses that can generate annual revenues of several million dollars a year. The average annual revenue earned by FedEx Ground contractors exceeds \$190,000.

FedEx Ground independent contractors are responsible for paying federal, state and local taxes, as well as their own labor costs, including wages, benefits, health, welfare and pension costs. They are also responsible for paying for work accident insurance (or workers' compensation coverage for themselves and those they hire), unemployment insurance premiums, payroll taxes, disability insurance premiums, social security taxes and or any other similar charges.

In its letter, the Teamsters union has attempted to position FedEx Ground as the "corporate poster child" for worker misclassification and cites as proof of this behavior a number of investigations of the company's business model by state attorneys general and various state agencies.

We have been in discussions with a number of state agencies and attorneys general over the past several years to ensure a mutual understanding of their concerns and our position with respect to the classification of FedEx Ground independent contractors. Those discussions have led to a resolution in some cases and, in others, an ongoing exchange of information regarding our business model. In nine states we have introduced a new contractor model that we believe is better aligned with the evolving regulatory environment in those states. It is important to note that in no state has it been agreed that FedEx Ground contractors have been misclassified and we continue to contract exclusively with independent contractors for pickup and delivery services across our network.

In stark contrast to the allegations of deliberate misclassification leveled by the Teamsters union, we also point to several recent court decisions that support our long-standing position that FedEx Ground independent contractors are properly classified.

- In March 2009, in the first class-action case challenging the FedEx Ground business model, a Washington State jury found that FedEx Ground single-work-area contractors are properly classified as independent contractors. The jury reviewed the evidence and reached its decision based on the testimony of 24 current and former contractors that showed that the contractors freely chose to enter into a contractual relationship with FedEx Ground, own and operate their businesses as they choose according to their agreements and achieve financial success based on their own efforts.
- In April 2009, the U.S. Court of Appeals for the D.C. Circuit affirmed the entrepreneurial opportunities available to FedEx Ground independent contractors as an important distinction from a traditional employee relationship. According to the court, "evidence of entrepreneurial opportunity augurs strongly in favor of independent contractor status." The court rejected the Teamsters union's arguments and held that our contractors are properly classified and therefore not subject to organization by the Teamsters union.

- In August 2010, U.S. District Court Judge Robert Miller issued a ruling in a Kansas class action case that declared plaintiffs independent contractors as a matter of law based on evidence clearly demonstrating that "FedEx hasn't retained the right to direct the manner in which drivers perform their work."

The reality is that entrepreneurs trying to build businesses and the companies that want to lawfully use their services are unfairly burdened by a lack of certainty surrounding worker classification. For example, every state has at least two – and some as many as four – different ways to distinguish employees and independent contractors. We support efforts to clarify and enact reasonable laws that address legitimate cases of worker misclassification while preserving the rights of Americans to own their own businesses. NCOIL's proposed Model Act is a sound effort to address these very issues.

At FedEx Ground, we're proud of our relationships with thousands of independent contractors and we stand by our belief that these independently-owned businesses deserve the opportunity to achieve success. We ask the members of NCOIL to consider the motivation for the Teamsters union's attack on FedEx Ground's business model and to remain steadfast in advancing the proposed seven-factor test as the linchpin of its Model Act.

Respectfully yours,



Kevin Koken
Vice President, Contractor Relations