



March 1, 2011

Mr. Jordan Estey
Legislative Director
National Conference of Insurance Legislators
601 Pennsylvania Avenue, NW
Washington, DC 20004

RE: Proposed Trucking and Messenger Courier Industries Worker's Compensation Act

Dear Mr. Estey:

Recently, a letter was sent to NCOIL from an organization calling itself The Leadership Conference (whose members include the Teamsters, ACLU and SEIU). The letter indicts FedEx for supporting NCOIL's model bill that proposes a seven-factor test for determining independent contractor status for purposes of workers' compensation law. The misleading tone of the letter suggests that FedEx is the only supporter of the model bill and should be demonized for its support. However, as you know, there are many other supporters of this model bill, including most notably the American Trucking Association, which represents the interests of its 37,000 members. Detractors simply do not want to acknowledge that the model bill reflects long-standing owner-operator characteristics and is designed to more clearly guide state legislators in properly defining independent contractors in the trucking industry.

The isolation and indictment of FedEx in this letter is not only misleading, but reveals the self-serving agenda of special interest groups and competitors of FedEx who, since they are losing in the marketplace, have decided to attack in the halls of state legislatures. The letter fails to disclose the most recent legal developments regarding the FedEx Ground independent contractor model and attempts to paint a picture that inaccurately suggests that only FedEx supports the NCOIL model bill. For example, the letter fails to inform that (1) FedEx received a highly favorable judicial decision in December that determined the work relationship with its drivers was properly that of independent contractors, and (2) the NCOIL model bill has garnered broad-based support throughout the trucking and courier industries as evidenced by those industries two lead associations' endorsement of the act.

FedEx is proud of its reputation as a people-first company that provides the best service in the industry. FedEx Ground is an integral part of that legacy. FedEx Corporation purchased Roadway Package System, Inc. (RPS) in 1998 and re-branded it as FedEx Ground in 2000. RPS was launched in 1985 and from day one contracted with independent owner-operators to deliver packages. FedEx Ground maintained that system

and it has proven highly successful for the company, most contractors, shippers, and the consuming public. The class action lawsuits referenced in the Leadership Conference letter have been filed by a relatively small number of mostly former contractors who no longer have a contractual relationship with FedEx Ground.

Federal District Court Judge Robert L. Miller Jr., was assigned to handle dozens of state law class action lawsuits brought around the country against FedEx Ground for alleged misclassification of its independent contractors. These class action lawsuits were consolidated into one multi-district litigation action in the Northern District of Indiana and presided over by Judge Miller. Recently, Judge Miller issued a ruling dismissing the lawsuits in most of the states, finding that FedEx Ground drivers are indeed independent contractors.

FedEx Ground pickup and delivery contractors own or lease their vehicles, own an equity interest in their routes and can hire their own employees. That means any contractor can buy additional routes or sell routes to grow or restrain their business as they see fit. Pickup and delivery contractors fall into two broad categories, single route contractors and multiple route contractors. Aside from the relatively small number of mostly former contractors who have filed lawsuits, the vast majority of all contractors are entrepreneurial small business men and women who thrive on the opportunity to run their own business. Those businesses can generate revenues of several million dollars a year. In fact, the average annual settlement for a FedEx Ground contractor is \$190,000. This would not be possible if the contractors were classified as employees and denied the ability to own and grow their businesses.

I hope this gives you a more complete understanding of FedEx Ground and its relationship with its independent contractors. FedEx believes the NCOIL model bill is a reasonable test for determining independent contractor status and properly reflects the proud traditions of independent owner-operators. We urge the NCOIL Worker's Compensation Committee to pass the Proposed Trucking and Messenger Courier Industries Worker's Compensation Act.

Sincerely,



AJ Sain
Staff Vice President
FedEx Government Affairs

AJS/bjb