



February 22, 2011

Jordan Estey, Legislative Director
National Conference of Insurance Legislators
601 Pennsylvania Ave. NW
Suite 900, South Building
Washington, DC 20004

RE: Proposed Trucking and Messenger Courier Industries Workers' Compensation Model Act

The Leadership Conference on Civil and Human Rights is the nation's foremost civil rights coalition, consisting of more than 200 national organizations to promote and protect the rights of all persons in the United States. American Rights at Work is a national labor policy and advocacy organization whose mission is to fight for a nation where the freedom of workers to organize unions and bargain collectively with employers is guaranteed and promoted. Together, we write to express our strong opposition to the Proposed Trucking and Messenger Courier Industries Workers' Compensation Model Act now being considered by the National Conference of Insurance Legislators (NCOIL) Workers' Compensation Insurance Committee. In our view, adopting the proposed Model Act would not be in the best interests of the public. We urge the Committee to not adopt this attempt to rewrite states' laws that, if adopted, would result in the denial of critical worker protections.

By making it easier for trucking and courier companies to classify drivers as independent contractors, rather than employees, the proposed Model Act would facilitate misclassification practices that are now prevalent in sectors of the trucking and courier industry. In making it easier to treat drivers as independent contractors, drivers would be in jeopardy of being denied workers' compensation benefits for injuries they suffer on the job. Trucking companies would also be freed of their obligations to provide workers' compensation protections to drivers who are integral to their operations and state workers' compensation funds would be deprived of necessary premiums.

We are particularly troubled that the Model Act is being actively advanced by FedEx Corporation. In 2007, The Leadership Conference and American Rights at Work jointly published a report, "FedUp with FedEx: How FedEx Ground Tramples Workers' Rights and Civil Rights." That report, a copy of which is enclosed, details claims that FedEx Ground had misclassified approximately 15,000 of its drivers as independent contractors. As a result, these misclassified workers suffer the worst of both worlds: they are without meaningful control over their work and they are without the legal protections and benefits of employees. Since the publication of our report, FedEx Ground has been the subject of numerous claims by state agencies that it is depriving its workers of their rights as employees and failing to pay various taxes and insurance premiums due the states. Last year, FedEx Ground paid \$3 million to Massachusetts to settle a determination that it was misclassifying drivers. In September 2010, the Attorney General of Kentucky sued FedEx Ground asserting that it misclassifies its drivers. And, in October 2010, FedEx Ground paid Montana \$2.3 million to settle similar claims. Also that month, the New York Attorney General sued FedEx Ground alleging that it misclassifies its drivers as independent contractors. According to FedEx's public filings, FedEx Ground has been the subject of some 40 state tax and other administrative proceedings that claim the company's "owner-operators" should be treated as employees.



These are in addition to scores of private class action and individual lawsuits involving similar allegations.

We believe that existing state laws requiring proper classification of workers should be fully enforced and that there should not be special exemptions for the trucking industry or for any other specific industries. Employees should be classified as employees and should receive the benefits of state laws intended to protect them.

If the NCOIL Workers' Compensation Insurance Committee moves forward with a Trucking and Messenger Courier Industries Model Act, we believe it should follow the precedent it set last year in connection with a construction industry worker classification model act. Specifically, we urge the Committee to defer to existing state laws that determine worker classification rather than creating a new standard for the trucking and messenger courier industries.

We hope that you find our views and the attached information helpful as you consider this matter. Please call Leadership Conference Counsel, Lexer Quamie at 202-466-3311 if you have any questions.

Sincerely,



Wade Henderson
President & CEO
The Leadership Conference on Civil and Human Rights



Kimberly Freeman Brown
Executive Director
American Rights at Work