

AN OPEN LETTER TO FEDEX GROUND/HOME DELIVERY DRIVERS

From The Legal Team

FedEx Ground/Home Delivery has repeatedly misstated the purpose and goals of the class-action lawsuits filed by drivers from around the nation. It is time to clarify for all those on the outside looking in what those suits are about.

“DRIVERS ARE ALREADY EMPLOYEES”

FXG has told drivers that the suits are designed to make drivers become employees. This is false. FXG knows it is false. The truth is that the drivers are already employees. This is an important distinction that the company simply does not want you to understand.

How can we say that drivers are already employees? First, the legal tests in all states and the federal government are based on the amount of control FXG has over you. Because FXG exerts almost total control over drivers, including vehicles, insurances, how packages are delivered, uniforms, scanners, flexing (and the list goes on and on) you are an employee. Second, courts and governmental agencies across the country have held FXG drivers to be employees. A judge in California ruled identically after a 9-week trial (the Estrada case). The National Labor Relations Board, a federal agency, has held over and over again that FXG drivers are employees (the latest ruling out of Boston in the third week of September). FXG has just settled with New Jersey Department of Labor, which found after an extensive audit, that drivers in New Jersey were employees. The same is true in California and many other states. Most recently, the Internal Revenue Service has allowed drivers to submit SS-8 forms, reclassifying them as employees for tax purposes.

“YOU CAN'T BE AN IC AND BE TREATED AS AN EMPLOYEE”

FXG is fond of saying it has "hundreds" of decisions that support independent contractor status. We have reviewed those items. In virtually every case, the driver was not represented by a lawyer or if the driver had a lawyer, there was no realistic way to obtain the information needed to prove employment status.

The lawsuits we have filed do not make a preference between employment status or independent contractor status. We are only saying that FXG can't call you an independent contractor while treating you as an employee. If FXG truly wants drivers to be independent contractors, then it has to change its relationship with the drivers. This means that FXG must relinquish control over the method, manner and means by which the drivers do their work. This means that FXG must allow drivers to deliver packages any way they want, and not micro-manage every aspect of a driver's day.

“FEDEX CAN’T HAVE IT BOTH WAYS”

The distinction between employee and independent contractor is important. Employees do not have to pay for the company's business expenses. Employees don't have to hire their own replacements. Employees are protected by many employment laws. Employees are entitled to unemployment compensation and workers compensation paid for by the company. The company also has to pay a portion of employment taxes. These are just a few of the benefits of employment that as an employee, you are (or were) entitled to as a current or former FXG driver.

To be sure, there are benefits of being an independent contractor, such as freedom to run a business any way you want, to work when you want, and to have an exclusive territory. But in order for you to be an IC, FXG has to give up the control over you and your "business". How FXG can deliver three million packages a day without such control remains to be seen. Stay informed. Stand your ground. Visit www.fedexdriverslawsuit.com for more information.