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Independent Contractor Case Sounds a Loud Warning

By Jeffrey Marshall and Ellen M. Heffes

The pending class-action case against FedEx Corp. is a clarion call for companies with a network of independent contractors to get their houses in order, experts say - or face potentially damaging legal action or audit charges.

At issue is FedEx's policies involving independent contractors, mostly drivers for FedEx Home Delivery or FedEx Ground. FedEx has classified them as contractors, responsible for buying or leasing their trucks, paying for all operating expenses, liability and workers compensation insurance, fuel, maintenance, etc. An evolving class-action lawsuit alleges that the company really has an employer-employee relationship with the drivers and should be paying them benefits, allowing business deductions and more.

Suits had been filed in at least 28 states, but have been consolidated under a U.S. District Court in Indiana, where the time-consuming process of discovery and certification of the class is expected to take place this spring and summer.

Andrew Schultz, president of Pro Unlimited, a company that handles contingent labor force issues for large companies, warns that companies need to be careful about how they act in this area - and be sure that what they have in writing is reflected by policies in the field. FedEx's competitors have more of explicit "employee" relationship with their workers, he says, which - on the surface, at least - gives FedEx a huge competitive edge in terms of savings on benefits, insurance and other worker-related costs.

Larger companies need to look at all their independent contractors and make a judgment on each worker as if they were being audited, Schultz argues. If they don't, he suggests, they leave themselves open to major claims by federal and state taxing authorities. The contractor issue has become "a revenue-generator for the government," he adds.

More than 90 percent of completed corporate audits find at least some problem in the company's treatment of independent contractors, Schultz says. Possibilities of litigation simply add to the potential financial damage.

Some published reports have put FedEx's potential legal liability as high as \$1.5 billion. Schultz concedes that a settlement would be likely at some point, yet the cost could still be far higher than it was for lesser cases involving Microsoft Corp., Time-Warner and IBM Corp.

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