

Testimony of Robert V. Williams

**Before the
Health, Employment, Labor and Pensions Subcommittee
and
Workforce Protections Subcommittee
Committee on Education and Labor
United States House of Representatives**

**Joint Hearing on
“The Misclassification of Workers as Independent Contractors:
What Policies and Practices Best Protect Workers?”**

July 24, 2007

Thank you Chairman Andrews and Chairwoman Woolsey for inviting me to testify today. Thanks also to the members of the Subcommittees who are interested in the misclassification issue that is hurting so many FedEx Ground and Home Delivery drivers today.

After retiring, I read an advertisement in the Worcester Telegram and Gazette in April 2001 for Independent Contractors at FedEx Home Delivery in Northboro, MA. The ad basically stated: “Run your own business, Become a business owner with a national leader, Be your own boss”. When I applied for a position as an “Independent Contractor” I was told that there were none available at present. The manager offered to train me as a temporary driver before I could become a “contractor” and do any driving work at FedEx Home Delivery.

I completed the mandatory training course and went to work as a temporary driver. I was paid by the hour by a temp firm named ADECCO and eligible for overtime. I was

furnished a uniform and rental van supplied by FedEx but was not a FedEx employee. I did not pay for any expenses while a temp. State and federal withholding were taken out of my weekly check by ADECCO.

I continued working as a temporary driver until June of 2002, when a route position became available. At that time, I signed a FedEx Home Delivery standard contractor operating agreement. I purchased a small commercial van that had to be white and inspected by FedEx for approval.

After utilizing this van for a period of time, I was told it no longer could accommodate the number of packages for my area. I was told I had to have a larger vehicle, so through FedEx I leased a larger vehicle called a P400. This vehicle was painted white and had all of the FedEx logos on permanent decals. This vehicle was also arranged for by FedEx who took care of all the paperwork. I worked with this new van until October 15, 2002, when I was involved in a serious accident, and hospitalized.

I did not return to work for 13 months. I did not pursue workers compensation. I was not able to work until early November of 2003, and returned as a temporary driver. I worked on and off as a temporary driver, driving a rental van supplied by FedEx and being paid by the temp agency ADECCO.

I was offered a different route and became a so-called "contractor" again in June 2004. I was told I had to lease or buy a much larger truck called a P500. This vehicle, only

attainable through FedEx, was white in color with logos, numbered in a FedEx series and showed USDOT markings on it. FedEx had a supply of vehicles at their Manchester, NH terminal, and FedEx arranged financing with one of the leasing companies it offered. The whole transaction, leasing arrangements, the credit information, etc., all flowed through FedEx. This was the only type of vehicle that FedEx approved. There were no exceptions.

As a “contractor” for FedEx, I was responsible for the cost of the vehicle, for the fuel, for the tires, for the maintenance, and all operating costs, including breakdown and emergency expenditures. I paid for a worker’s accident policy, in lieu of Workmen’s Comp weekly deductions and I also paid weekly for liability insurance from Protective Insurance. These expenses were taken out of my settlement by FedEx. There were no other insurance services or policies that were made available to us.

We were told we could get our own insurance, but having personally checked a number of insurers, I found it to be cost prohibitive. Additional expenses taken from my settlement were for uniforms, scanners, claims against me, mapping software, random drug testing, annual DOT inspection and truck washing.

No taxes or Social Security were ever deducted from our settlements. We were issued a 1099 form annually. I was responsible for reporting my income to federal and state tax authorities.

In the Holiday period of 2004, things started to change drastically. We were being monitored more and more by the use of the scanner. The scanner was used as a tracking device to monitor our daily delivery areas. We were required each morning to report early to load our trucks. The number of packages and stops were the means by which we were compensated. We were paid by the package and not an hourly wage. FedEx Home Delivery controls the number of packages tendered to drivers and controls the amount a driver can make through their computer systems. This means of controlling drivers is on going today. There were many times when FedEx managers would not allow us to leave and go out on our routes until all packages were accounted for. This could severely impact our earnings by reducing the time we would be able to make deliveries. Packages were added or subtracted to our routes, affecting our earnings on a daily basis.

I remain in contact with numerous drivers who are still with FedEx Home Delivery throughout the country. I contact many drivers in the New England area on a regular basis especially Northboro, MA. The same issues, treatment and procedures I experienced still go on today.

Due to my many years of working in the transportation industry, I understand clearly the differences between an employee and independent contractor. The control that FedEx Home Delivery had over me and has over the drivers today shows that the drivers are controlled like employees but called “contractors.”

- FedEx Home delivery drivers must pay for uniforms worn to FedEx standard, with a black belt, proper shoes, no sneakers.

- Purchase or lease a FedEx truck; prescribed by FedEx for size, color, logos, numbering, etc.
- Purchase or lease a FedEx scanner; this is a mandatory item. The daily package delivery duties cannot be performed without it and it is monitored by FedEx.
- Drivers must pay for all maintenance prescribed by FedEx and USDOT. Drivers must furnish all fuel, tires, and any other costs related to the operation of the vehicle.
- Drivers must pay for a workers accident policy, and liability policies, deducted by FedEx to Protective Insurance Company.
- Drivers who cannot work on any given day and cannot find a FedEx approved temp driver are regularly threatened with contract termination.

To me the biggest personal issue I had was the Time Off program. Drivers participate at the rate of \$17.50 per week to join into the “Drivers Time off” program. Time off requests are made in May of each year according to “contractor” seniority. Any holiday falling in the week off would be included as part of the week off with no compensation. A “contractor” who signs up for the time off program, must remain in the program for the entire year. All selected weeks must be honored by “contractors” and managers. So we were paying FedEx to book two weeks away from delivering with no return to us. No interest was paid on this account. We don’t know where this money went. No one in management could explain how the program really worked.

In August 2005, FedEx terminated the Senior Manager who had been there approximately 3 years. He was replaced by a number of additional roving managers, until a new manager was appointed, in September. At this point, nearly all drivers signed authorization cards to join Teamster Local Union 170. From the time that FedEx was notified of these actions by the drivers there was a drastic change in management. This continued through November 2005 when a hearing was held by the NLRB. I testified at that hearing as I am testifying today. We were found to be employees.

I was terminated by FedEx in December 2005. The National Labor Relations Board ordered an election but after the company fired me and a number of other union supporters the election was postponed. The Board filed a complaint that charged FedEx for illegally terminating me for protected union activities. There are more charges pending against the company for unfair labor practices at the Northboro location. A hearing is set for August.

After I was terminated, I filed for unemployment benefits in Massachusetts. The state investigated my work conditions. The company argued that I was a so-called “contractor” and not eligible for benefits. The state concluded that FedEx controlled me as an employee and I was awarded unemployment. Since that ruling, other FedEx Ground and Home Delivery drivers have also been found eligible for Massachusetts unemployment coverage. With the Chairman’s permission, I ask that the Massachusetts ruling in my unemployment case be submitted with my statement for the record.

Many present FedEx Ground or Home Delivery drivers would be too scared of the company's reaction if they testified. I am here to state my professional opinion. With over 45 years of experience in the industry, the FedEx Ground model rests clearly on the misclassification of its drivers as so-called "contractors." Thank you.