

## **New Ruling Reaffirms the “Right to Control” Test for Independent Contractor or Employee Status**

September 3, 2014

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Last week the United States Court of Appeal for the Ninth Circuit reaffirmed the “Right to Control” Test as the predominant and determinative factor in deciding whether an individual is an independent contractor or an employee. This ruling is extremely important since misclassification of a worker can create substantial liability. The case, entitled *Alexander v. FedEx Ground Package System, Inc.* held that under California law, the right to control the manner or means by which the result is obtained is the predominant factor in determining whether a worker is an independent contractor or an employee.

The court found that there was overwhelming evidence that the defendant, FedEx Ground, maintained the right to control the manner and means by which delivery drivers performed their work. While the drivers were employed under an Operating Agreement which purported to establish an independent contractor relationship, the manner and means by which they performed their work was highly regulated by FedEx Ground. For example, under the Agreement and in practice, workers were required to purchase FedEx uniforms and were subject to grooming, attire and delivery vehicle standards. FedEx Ground even specified the configuration of the driver’s trucks regulated their routes and collected payments from customers.

The court found that inasmuch as the drivers had been misclassified as independent contractors, they were entitled to unpaid wages, including overtime claims and employment expenses under the California Labor Code.

The “Right to Control” test has been the long-standing standard in California for determining whether a worker is an independent contractor or an employee. This latest case is a reaffirmation of that test and a warning that both state and federal courts in California will reject any test that attempts to get around that standard. Clearly, California employers take significant

risks in engaging independent contractors. Employers should be aware that courts will strictly scrutinize the facts underlying their workers' engagements regardless of the characterization employers place on the status of their workers.

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