



**National Employment  
Law Project**

May 6, 2011

The Honorable Martin O'Malley  
Governor  
State of Maryland  
100 State Circle  
Annapolis, Maryland 21401-1925

Re: Maryland Senate Bill 685

Dear Governor O'Malley:

I am writing on behalf of the National Employment Law Project (NELP) to urge your veto of Senate Bill 685, legislation recently passed by the Maryland General Assembly that would exempt a broad range of service delivery drivers from coverage under the state's unemployment insurance (UI) program. NELP is a national non-profit organization that promotes policies to improve economic security for low-wage and unemployed workers.

Like the majority of states, Maryland's existing unemployment insurance law and its long-standing "ABC test" create a strong presumption of employment status in most circumstances in which workers provide services for the benefit of employing entities. The remedial purpose of the ABC test is to provide the broadest possible coverage of workers under Maryland's UI law so that they are eligible for partial income replacement in the event they lose jobs through no fault of their own.

The Secretary of the Department of Labor, Licensing and Regulation (DLLR) has already exercised his regulatory authority under Maryland's UI law to exclude certain messenger service businesses from coverage as independent contractors. Generally, this exemption applies to messengers and couriers who personally deliver mail, messages or documents to the public or commercial establishments on foot, by bicycle or motor vehicle. **Senate Bill 685 would dramatically expand the scope of this relatively narrow exemption to include all kinds of delivery services, including large same-day courier driver businesses.**

This legislation would carve out a specific set of employers, including FedEx Ground, a subsidiary of Federal Express, that requires all its drivers to enter agreements stating that they are independent contractors as a condition of employment. Senate Bill 685 is the culmination of a years-long campaign by FedEx to secure a legislative fix that will allow it to evade responsibility for its employees in Maryland. Last year, the company promoted a similar UI exemption for messenger service delivery drivers, but the bills failed after committee hearings. In addition, the Maryland DLLR recently audited FedEx Ground, found that 340 workers had been misclassified as independent contractors, and concluded that FedEx Ground should have been paying unemployment taxes on the wages of these workers. This is the same conclusion that UI agencies around the country have reached. It is the reason FedEx has had to defend against a spate of litigation around the nation, including federal lawsuits filed by attorneys general of eight states, and the explanation for its efforts to secure a legislative solution for its unlawful employment practices.

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When companies like FedEx Ground adopt a business model that requires workers to assume the liabilities of business owners while still being subject to the direction and control of the company in the performance of their day-to-day duties, these employers are not creating a new class of entrepreneurs. They are, in fact, depriving those workers of basic rights provided by employment laws insuring payment of minimum wage, overtime, workers compensation, unemployment insurance and collective bargaining. By requiring these "agreements", they are cutting payroll costs and gaining an unfair advantage over other employers who are complying with the fair labor standards provided under existing law.

Signing Senate Bill 685 will not only carve out preferential treatment for a specific employer. It will encourage other employers in this same industry to change their business models to stay competitive. It will erode basic employment protections for an entire class of workers and will deprive them of a financial safety net in the event of involuntary unemployment. It will reduce revenues to the state's unemployment trust fund. And it will encourage other industries to come to the Maryland legislature with more proposals to legalize the unlawful misclassification of workers.

I strongly urge you to veto Senate Bill 685 and close the door on business efforts to escape compliance with the legal responsibilities required by the employer-employee relationship, as currently determined under Maryland's unemployment insurance law.

Sincerely,

A handwritten signature in cursive script that reads "Christine L. Owens".

Christine L. Owens  
Executive Director  
National Employment Law Project