

## Manager's Class Action Against FedEx Kinko's Tossed

By **Ben James**, [ben.james@portfoliomedia.com](mailto:ben.james@portfoliomedia.com)

*Monday, Sep 10, 2007* --- A federal judge in Oakland has dismissed a class action lawsuit against FedEx Kinko's Office and Print Services Inc., holding that the company was correct in classifying its center managers as exempt from certain employment benefits.

U.S. District Judge Sandra Brown Armstrong handed down her 16-page order last month, granting the defendant summary judgment and ruling that the center managers qualify for the executive exemption contained in California Industrial Welfare Commission Wage Order 7-2001.

"The company is very pleased with the outcome," said Keith Jacoby, a lawyer with Littler Mendelson PC, who represented FedEx in this matter.

Jacoby added that this case demonstrates an increasing tendency on the part of employers to challenge wage-and-hour class actions on the merits, rather than settling after a class gets certified.

"In the beginning of this class action trend, companies were eager to settle and get out," Jacoby said. "Companies today are showing more of a willingness to try to win these cases."

Jacoby said this is a result of two factors. First, as case law evolves and becomes clearer, uncertainty about how a particular case might play out diminishes for all involved parties.

Second, companies are getting smarter about protecting themselves before cases are even filed, according to Jacoby. A decade or so of bad results for employers left companies more attuned to what they have to do to keep from running afoul of employment laws, Jacoby said.

"They are reacting to the realities on the ground, and they're improving their practices," Jacoby said.

He pointed to better documentation as an example. He added that performance reviews that came up during the Fedex Kinko's case bolstered the defendant's argument. They included details about what center managers actually did, illustrating that the managers spent most of their time on tasks considered exempt under the law.

FedEx had to convince Judge Armstrong that center managers were involved in the management of a recognized unit; routinely directed the work of two or

more employees; had authority with respect to the hiring, firing and promotion of workers; regularly exercised independent judgment and discretion; were engaged in duties that meet the exemption test; and earned a monthly salary equivalent to at least twice the state minimum wage for full-time employment.

Judge Armstrong took issue with the plaintiffs' argument that the center managers are merely participants in a managerial team. She compared the managers to captains who are in charge of and responsible for ships, despite the fact that they still have to answer to an admiral.

The plaintiffs also claimed that standardized policies and procedures negated the center managers' ability to exercise independent judgment.

"The center managers at Kinko's are virtual slaves to the automation of the stores' routinized procedures," the plaintiffs argued.

But Judge Armstrong rejected the argument that the existence of FedEx Kinko's policies, including the instructions detailed in its 400-page operations manual, undercut the center managers' exercise of discretion, noting that virtually every employee in America has to follow guidelines.

In September 2006, the court certified a class potentially consisting of about 490 current and former FedEx Kinko's center managers.

FedEx Kinko's removed the case to federal court in June 2005.

Named plaintiff Stephen Whiteway filed his complaint against FedEx Kinko's in the Superior Court of the State of California in May 2005, alleging that the defendant improperly classified its center managers as exempt from benefits such as overtime pay and meal and rest breaks.

The plaintiffs in this suit are represented by Scott Cole & Associates APC.

Fedex Kinko's is represented in this matter by Littler Mendelson PC.

The case is *Whiteway v. FedEx Kinko's et al.*, case number 05-2320 in the U.S. District Court for the Northern District of California.