

## **FedEx Sued For Not Letting Workers Clock In On Time**

By **Brendan Pierson**

[Law360](#), New York (March 12, 2009) -- [FedEx](#) Corp. has been hit with a proposed class action alleging that it avoided paying drivers and support employees at its Colorado distribution facilities for all the time they spent at work by not always allowing them to clock in when they arrived.

According to the suit, filed Tuesday in the U.S. District Court for the District of Colorado by FedEx employee Joao Hernandez, FedEx facilities in Colorado have repeatedly used the false pretext of bad weather to prevent employees from clocking in at their normal start times, violating the Fair Labor Standards Act and Colorado's minimum wage law.

FedEx maintains an automated phone line, called the "snow line," for employees to call in the event of bad weather to find out if their start time has been delayed, according to the complaint. FedEx employees who arrived at their normal start times have sometimes been told that they cannot clock in because work is delayed, and that they should have called the snow line.

"In reality, however, FedEx managers regularly used the 'snow line' as an excuse to keep employees from receiving compensation for time that they spent at work, rather than as a convenience for the employees' benefit, even on days when no adverse weather was apparent and there would not have been any reason for the employees to think that their work schedules might be delayed," the complaint said.

"For example, the 'snow line' in the past has been used to post 'delayed start' hours even on days in May and June when there was no snow present in the Denver metropolitan area," it added.

When the time spent waiting to clock in was included, employees were sometimes made to work more than 40 hours per week without being paid for overtime, according to the complaint.

Even when employees were allowed to clock in on time on days when the snow line was in use, they were often assigned menial tasks unrelated to their normal job duties, as a form of retaliation against them for trying to exercise their right to full compensation, the complaint said.

The complaint also alleges that FedEx has never paid employees for the time spent calling the snow line, even though it is effectively mandatory, violating the FLSA.

The plaintiff is seeking to certify a class under the FLSA of all employees at FedEx facilities in Colorado who were similarly situated in the last three years, and a class under Colorado law going back two years.

Attorneys for the plaintiff said that it's too soon to tell how large the class might be, how many facilities in Colorado might end up involved in the suit or whether the suit might expand beyond Colorado.

The plaintiff is asking the court to enjoin FedEx from continuing to prevent workers from clocking in on bad weather days and to award civil penalties, costs and attorneys' fees.

A FedEx spokesman could not immediately be reached for comment Thursday.

Hernandes' suit is the latest of many wage-and-hour claims filed against FedEx in recent years, alleging misclassification of employees, denial of meal and rest breaks and other violations.

The plaintiff is represented by [Burg Simpson](#) Eldredge Hersh & Jardine PC.

The case is *Henriques v. FedEx Corp.*, case number 1:09-cv-00526, in the U.S. District Court for the District of Colorado.