

Client Alert—Independent Contractors

Our many business clients and friends should be made aware of recent legislative developments regarding Massachusetts' businesses that employ independent contractors. If you have workers in this capacity, please review the following summary of this legislation and the implications it may have for your business:

As a result of this legislation, any individual who performs any service to a particular business shall be considered an employee under Massachusetts' law unless:

(1) the individual is free from control and direction in connection with the performance of the service, both under his contract for the performance of service and in fact; and

(2) the service is performed outside the usual course of the business of the employer; and,

(3) the individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.

Unless the individual meets all three of these standards, they are presumed to be an employee for purposes of Massachusetts' law. Other factors—including the failure to withhold federal or state income taxes, to pay unemployment compensation contributions or workers compensation premiums—are irrelevant when determining their employment status.

If a business owner fails to properly classify an individual as an employee, criminal penalties and/or civil remedies including imprisonment and substantial fines may be imposed. In addition, businesses can be banned from performing work for public entities in Massachusetts. Perhaps most importantly, the president and treasurer of a corporation and any officer or agent having the management of the entity can be held personally liable for any violations that neglect the proper classification of individuals as employees.

This legislation affects a change to Massachusetts law only. Issues with respect to the Internal Revenue Service classifying independent contractor status remain open for debate.

If you have questions regarding the new independent contractor laws, please contact one of our attorneys to discuss the ramifications for your business: Peter W. Shrair (413-735-8013), Thomas A. Miranda (413-735-8030) or Jeffrey M. Siegel (413-735-08010).