



CARAS AND SHULMAN
Certified Public Accountants

CLIENT ALERT

THE NEW MASSACHUSETTS INDEPENDENT CONTRACTOR LAW

The Commonwealth recently changed the standard for determining whether workers are independent contractors or employees. The new law, which applies to all Massachusetts employers, creates a stricter three factor test than the IRS's twenty factor test.

Three-Part Test

The Massachusetts law creates a presumption of employee status unless a company can establish that all three factors listed below are met.

1. The individual is "free from control and direction in connection with the performance of the service, both under his contract... and in fact," and
2. The service must be "performed outside the usual course of the business of the employer," and
3. The individual must be "customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed."

Freedom From Control

In order to demonstrate the freedom from direction necessary to be classified as an independent contractor under Massachusetts law, a

worker must be able to demonstrate he or she actually carries out his or her activities and duties with independence and autonomy. Examples of such freedom include the worker using his or her own approach without instruction to complete the job and dictating the hours that he or she will work.

Service Outside the Usual Course of Company's Business

In order to properly be classified as an independent contractor, a worker must perform service or work that is outside the scope of the company's business. A worker who performs "the same type of work that is part of the normal service" delivered by the company cannot be an independent contractor. While this factor may be the easiest factor to understand, it is perhaps the most significant in terms of its effect on companies.

Independent Trade, Occupation or Business

In order to be properly classified as an independent contractor, a worker must be customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed. Thus, in order to be an independent contractor, a worker must routinely provide services independently and must be providing

services to a company that are of the same nature as those services he or she routinely provides independently.

Violating the Independent Contractor Law

If an employer fails to properly classify an individual as an employee, then civil and criminal penalties may apply. Penalties up to \$25,000 and one year imprisonment for a first offense, and \$50,000 and up to two years imprisonment for a second offense can be imposed. Personal liability may also be extended to officers of a corporation.

The Attorney General's office has yet to prosecute a business for violation of this law; however, all Massachusetts employers should seek professional guidance when examining work relationships.

Conclusion

In addition to the obvious concerns about this new law, employers should also be aware that the change in state law may also have some effect on issues typically governed by federal law. While these changes are new, no one can predict the outcome of litigation that may arise.

We at Caras and Shulman will keep you posted on this law.

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