Miscellaneous Documents Regarding Massachusetts Independent Contractor Law

July 24, 2017

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December 10, 2004

Massachusetts Independent Contractor Law Changes

Dear Friend:

I am enclosing a legal advisory on the changes to Massachusetts’ Independent Contractor Law. The incorrect use of independent contractors is a critical issue for Massachusetts workers and businesses. Employers that improperly classify employees as independent contractors deprive these workers of proper Social Security contributions, worker’s compensation insurance and other benefits, while also unfairly reducing employers’ state and federal tax withholding, and related obligations. This practice disadvantages businesses that bear higher costs in complying with the law. In this way, independent contractor misclassification undermines fair market competition.

Massachusetts’ legislature has amended the law, first enacted in 1990, that creates the presumption of employment in Massachusetts (the "Independent Contractor Law"). The amendments became effective July 19, 2004. Another law, effective September 8, 2004, increases the potential sanctions for violations of the Independent Contractor Law.

The Independent Contractor Law prevents far more workers from being treated as independent contractors than under the traditional state and federal standards. As a result,

Massachusetts’ employers will need to reexamine many of their work relationships to ensure that they are complying with the law. The Independent Contractor Law creates a presumption that a work arrangement is an employer-employee relationship unless the employer can overcome the legal presumption of employment by establishing that three factors are present. First, the worker must be free from the presumed employer’s control and direction in performing the service, both under a contract and in fact. Second, the service provided by the worker must be outside the employer’s usual course of business. And, third, the worker must be customarily engaged in an independent trade, occupation, profession or business of the same type that s/he will be performing for the employer.

An employer’s failure to withhold taxes, contribute to unemployment compensation, or provide worker's compensation may not be considered when analyzing whether an employee has been appropriately classified as an employee or independent contractor. The law deems irrelevant the status of a worker as a "sole proprietor or partnership," for the purpose of obtaining worker’s compensation insurance.

The potential penalties for violations are severe. My office may issue a civil citation or institute criminal prosecution for both intentional and unintentional violations of the Independent Contractor Law. Upon criminal conviction, or following three civil citations for intentional violations, employers may be debarred from public works contracting for up to two years. Employees also may institute private actions for themselves and on behalf of others for triple damages, attorneys’ fees and costs. Violations also carry a potential maximum penalty of up to $50,000 per civil violation, as well as prison time and fines for criminal violations.

The Independent Contractor Law creates broad liability for both business entities and individuals, including corporate officers, and those with management responsibility over affected workers.

I view the misclassification of employees as a serious violation of state law. Where appropriate, my office will enforce aggressively the provisions of the Independent Contractor Law.

Sincerely,

Thomas F. Reilly
Pursuant to G.L. c. 23, § 1 (b), the Office of the Attorney General issues the following Advisory:

**INTRODUCTION**


Employers that improperly classify employees as independent contractors deprive these workers of proper Social Security contributions, worker’s compensation insurance and other benefits, while also unfairly reducing employers’ state and federal tax withholding, and related obligations.¹ This practice disadvantages those businesses that bear higher costs in complying with the law. In this way, independent contractor misclassification undermines fair market competition.

Massachusetts’ legislature has manifested its interest in preventing independent contractor misclassification by amending the law, first enacted in 1990, which creates the

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¹ State and federal law regulate employers’ payroll tax obligations. See M.G.L. c. 62B, § 2; 26 U.S.C. §3102. Employers transacting business in Massachusetts who pay “wages taxable to a resident or nonresident individual shall deduct and withhold a tax from such wages for each payroll period.” 830 CMR 62B.2.1(4)(a)(1). Such employers “shall withhold amounts determined according to tables prepared by the Commissioner. 830 CMR 62B.2.1(4)(a)(3). Massachusetts Department of Revenue, *Massachusetts Circular M*. Employers must deduct taxes from their employees and are liable for the payment of such tax. 26 U.S.C §3102(a), (b). In addition, state unemployment and worker’s compensation law require employer payment. M.G.L. c. 151A, §14 (requiring employers to make contributions for employee unemployment insurance); M.G.L. c. 152, §25A (requiring employers to provide worker’s compensation insurance).

The Attorney General is authorized under the law to issue a civil citation or institute criminal prosecution for both intentional and unintentional violations of the Independent Contractor Law. M.G.L. c. 149, § 27C (a) (1), et seq. Upon criminal conviction, or following three civil citations for intentional violations, employers may be debarred from public works projects for up to two years. M.G.L. c. 149, § 27C (b) (3). Employees also may institute private actions for themselves and others similarly situated for treble damages, attorneys’ fees and costs. M.G.L. c. 149, § 150.

The Independent Contractor Law excludes far more workers from independent contractor status than are disqualified under the traditional state and federal law tests, including the 20 Factors Test set forth in Internal Revenue Service (“IRS”) Revenue Ruling 87-41, the Fair Labor Standards Act (“FLSA”) and the Massachusetts common law. As a result, Massachusetts employers will need to reexamine many of their work relationships to ensure that they are complying with the law.

I. Distinguishing Employees from Independent Contractors Under State Wage and Worker’s Compensation Law

The Independent Contractor Law creates a presumption that a work arrangement is an employer-employee relationship unless the party receiving the services can overcome the legal presumption of employment by establishing that three factors are present. First, the worker must
be free from the presumed employer’s control and direction in performing the service, both under a contract and in fact. Second, the service provided by the worker must be outside the employer’s usual course of business. And, third, the worker must be customarily engaged in an independent trade, occupation, profession or business of the same type.\(^2\) M.G.L. c. 149, § 148B.

This rigid, three-part test is unlike the well-established IRS, FLSA, National Labor Relations Act (“NLRA”) and state law tests, which have flexible criteria that must be balanced according to the circumstances of the work arrangement. Since the independent contractor tests contain “no shorthand formula or magic phrase that can be applied to find the answer, . . . all the incidents of the relationship must be assessed and weighed with no one factor being decisive.”

_NLRB v. United Insurance Co. of America_, 390 U.S. 254, 258 (1968); _Chase v. Independent Practice Association_, 31 Mass. App. Ct. 661, 665 (1991) (“In the employment context, a master-servant relationship is determined by a number of factors”); _Dykes v. Depuy, Inc._, 140 F.3d 31, 37 (1st Cir. 1998). In contrast, the Independent Contractor Law requires proof that the worker meets all three of its requirements. Otherwise the worker is deemed an employee for purposes of Massachusetts’ worker’s compensation and wage laws.

1. **Freedom from Control**

First, a worker must be free from “control and direction” in the execution of his or her job. M.G.L. c. 149, § 148B (a) (1). The analysis of this factor is similar to the common law, IRS

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\(^2\) Historically, Massachusetts courts relied on many of the same factors used by the IRS in its “20 factors test” to distinguish independent contractors from employees in the wage and hour context. See _Commonwealth v. Savage_, 31 Mass. App. Ct. 714 (1991) (real estate broker who scheduled her own work hours, bought her own supplies and worked from home deemed an independent contractor). Note, however, that because the broker worked in the employer’s normal trade, Savage likely would not have overcome presumption of employment set forth in M.G.L. c. 149, § 148B.

and FLSA control and economic realities tests. An employment contract or job description indicating that a worker is free from supervisory direction or control is a prerequisite, but is insufficient by itself under the Independent Contractor Law. To be free from an employer’s direction and control, a worker’s activities and duties must actually be carried out with independence and autonomy. For example, an independent contractor completes the job using his or her own approach without instruction and also dictates the hours that he or she will work on the job. *Savage*, 31 Mass. App. Ct. at 717-18; *Brigham’s Case*, 348 Mass. 140 (1964) (worker was employee under the worker’s compensation law because the employer “had the right to control employee in the performance of the details of his work.”); I.R.S. Revenue Ruling 87-4, 1987-1 C.B.; IRS Publication 15-A, *Employer’s Supplemental Tax Guide*.

2. Service Outside the Usual Course of Employer’s Business

To qualify as an independent contractor, the worker’s job or service also must be performed “outside the usual course of business of the employer.” M.G.L. c. 149, § 148B (a) (2). Hence, a worker who performs the same type of work that is part of the normal service delivered by the employer may not be treated as an independent contractor. *Cf. Canning’s Case*, 283 Mass. 196 (1933) (pipe fitter hired to install steam pipes in factory was engaged in the usual course of the employer’s business, therefore, he was an employee entitled to worker’s compensation coverage).³

3. Independent Trade, Occupation or Business

The worker must work routinely in an “independently established trade, occupation, profession or business.” M.G.L. c. 149, § 148B (a) (3). The particular service in question must be “similar in nature” to the “independently established trade, occupation, profession or

³ Note that state unemployment statutes permit independent contractors to work either outside of the employer’s normal course of business or away from the worksite, unlike the Independent Contractor Law. M.G.L. c. 151A, § 2 (b).
business” of the worker. M.G.L. c. 149, § 148B (a) (3). An independent contractor must represent him or herself to the public as “being in business to perform the same or similar services.” I.R.S. Revenue Ruling 87-41, Factor 12(c). Furthermore, an independent contractor often has a financial investment in a business that is related to the service he or she is currently performing for the employer. I.R.S. Revenue Ruling 87-41, Factor 14. Ordinarily, an independent contractor has characteristics of an independent business enterprise. See Fair Labor Standards Handbook, Tab 200 ¶ 217, August 1998.

An employer’s failure to withhold taxes, contribute to unemployment compensation, or provide worker’s compensation may not be considered when analyzing whether an employee has been appropriately classified as an employee or independent contractor. M.G.L. c. 149, § 148B (b). Hence, an employer’s subjective belief that a worker should be an independent contractor may have limited relevance under the Independent Contractor Law. Similarly, the amendments to the Independent Contractor Law deem irrelevant the status of a worker as a “sole proprietor or partnership,” for the purpose of obtaining worker’s compensation insurance. M.G.L. c. 149, § 148B (c).

II. Violations of the Presumption of Employment Statute

An employer violates the statute when two acts occur. First, the employer must classify or treat a worker as an independent contractor although the worker does not meet each of the criteria in the three-factor test identified on pages 2-5, supra.

Second, in receiving services from the worker, the employer must violate one or more of the laws enumerated in the Independent Contractor Law, including several of the following wage and hour, taxation, and worker’s compensation statutes:
• Any of the wage and hour laws set forth in M.G.L. c. 149

• The minimum wage law set out in M.G.L. c. 151, §§ 1A, 1B and 19; 455 CMR 2.01, et seq.

• The state overtime law set forth in M.G.L. c. 151, §§ 1, 1A, 1B and 19

• The law requiring employers to keep true and accurate employee payroll records, and to furnish the records to the Attorney General upon request as required by M.G.L. c. 151, § 15

• Provisions requiring employers to take and pay over withholding taxes on employee wages. M.G.L. c. 62B

• The worker’s compensation provisions punishing knowing misclassification of an employee. See M.G.L. c. 152, § 14.4

In addition to providing for imposition of substantial civil and criminal penalties, the law permits the Attorney General to debar from public works certain violators of the Independent Contractor Law. M.G.L. c. 149, § 27C (a) (3). The length of debarment depends upon the nature and number of violations.

**Debarment Resulting from a Criminal Conviction**

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<tr>
<th>Violation without intent:</th>
<th>First Offense</th>
<th>Subsequent Offense</th>
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<tr>
<td>6-month debarment</td>
<td>3-year debarment</td>
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| Willful violation:       | 5-year debarment | 5-year debarment |

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4 Compare M.G.L. c. 152, § 14(3) (requiring an employer to “knowingly” misclassify an employee in order to violate the worker’s compensation provision) with M.G.L. c. 149, §§ 27C(a)(1) & (2), (b)(1) & (2) (providing penalties for both intentional and unintentional employee misclassifications). A criminal conviction for intentionally misclassifying an employee in order to avoid worker’s compensation premiums carries a state prison sentence of up to five years, a jail sentence between six months to two and a half years and/or a fine between $1,000 and $10,000. M.G.L. c. 152, § 14(3).
Debarment Resulting from a Civil Citation

Three intentional citations 2 year debarment
Failure to comply with civil citation or administrative order 1 year debarment

M.G.L. c. 149, § 27C(a)(3).\(^5\)

Violations also carry a potential maximum penalty of up to $50,000 per civil violation, as well as prison time and criminal fines for criminal violations. The Independent Contractor Law creates broad liability for both business entities and individuals, including corporate officers, and those with management responsibility over affected workers.\(^6\)

The Attorney General views the misclassification of employees as a serious violation of state law. Where appropriate, the Attorney General will enforce aggressively the provisions of the Independent Contractor Law.


\(^6\) Compare Commonwealth v. Cintolo, 415 Mass 358 (1993) (permitting only “persons” to be charged).
How Do You Define Independent Contractor?

Does Your Definition Meet The Tests of The MA Independent Contractor Law
Amendment of July 2004

Over the past several months workers compensation auditors have been out meeting with employers and handing out hefty audits. The additional premiums have largely been due to the use of independent contractors especially the sole proprietor, if no workers compensation insurance is in place. This is an issue that any business using subs and independent contractors needs to be aware of because the consequences to you could be drastic. An amendment to the MA Independent Contractor Law in July 2004 has changed the definition of who is an independent contractor.

The University of MA and Harvard University Schools of Law and Public Health conducted a study for the state of MA that showed between 2001 and 2003 misclassification of independent contractors/employees resulted in $91 million in unpaid workers compensation premium. A significant portion of that unpaid premium was due to classification errors in the construction industry.

The study states the major reason for the misclassification by employers is to avoid paying social security contributions, federal and state tax withholdings, unemployment insurance, health insurance and workers compensation insurance and that misclassification has been on the rise since 1995. The study also stated that the amount of revenue lost to the State and Federal governments was not calculable but much higher. The amendment is designed to help employers distinguish employees from independent contractors using a clear, rigid 3-point test.

First, is the worker free from control? The worker must do their work independently and be self-sufficient. They must complete the job using their own approach without instruction and determine the hours they will work on the job. The Workers Compensation Bureau has decided if you provide materials they do not meet this test.

Second, is the workers service outside the employers’ usual course of business? If the worker does the same work that is a normal service of the employer the worker is not an independent contractor. A good example of this would be a company that specializes in window and door installation, if the worker installs windows and doors under these tests they cannot be classified as an independent contractor. What is unclear and we have not been able to get anyone to give us an opinion on is the full service remodeling contractor; are the plumber, HVAC, and electrical contractors part of the your normal services or since you are not licensed to provide these services are they outside of this law??

Finally, is the worker customarily engaged in independent trade? The public must see the person providing the labor as an independent business. The worker must have a financial investment in his/her business; they may have their own employees and work for several different companies.
These 3 factors are not flexible and the law states that if all 3 are not met the worker is deemed an employee for MA workers compensation and wage laws. In the past tests set forth by the IRS, Federal Fair Labor Standards Act, or MA common law were used to determine independent contractor status. This amendment changes that and the penalties for violating this law are sizable.

Two factors are used to indicate a violation: 1. the employer treats the worker as an independent contractor when they do not meet all 3 criteria and 2. they also violate one or more of the laws listed under the Independent Contractor Law. Some to the laws that are included under the Amendment are minimum wage, overtime, tax withholding, payroll recording and reporting, and workers compensation. If a violation has been committed the employer can face substantial civil and criminal penalties. The maximum penalties carry a potential fine of $50,000 per civil violation and criminal violations could result in prison time as well as criminal fines.

As an industry, contractors are going to have to take a hard look at all labor provided on your jobs and apply these criteria. If workers do not qualify under this new definition of independent contractor then business models may have to change. We have spoken with the state bureaucrats that have reviewed this law and how it affects Workers Compensation Insurance and we are very concerned. For more information you can read “An Advisory from the Attorney General” available online at www.wcribma.org in the “What’s New” section.
Businesses often amplify their workforce by hiring independent contractors to perform short-term, project-based, or skill-specific labor. They do this for any number of reasons (cost savings, short term lack of employees, etc.). Massachusetts employers must take care, however, when classifying workers as independent contractors as opposed to employees. If it is determined that an employer has misclassified an employee as an independent contractor, the law empowers Massachusetts Courts and the Attorney General to enforce strict and costly civil and criminal penalties. It is important to understand that any time someone is hired, that person is presumed under Massachusetts law to be an employee.

A. The Test

Massachusetts Gen.L. c. 149, §148B, known as the Massachusetts Independent Contractor Law or the Massachusetts Misclassification Law, provides a three part test known as the ‘ABC’ test, to determine whether that person (people) can be deemed an independent contractor. Somers v. Converged Access, Inc., 454 Mass. 582, 589 (2009). All three prongs of the test must be satisfied to classify a worker as an independent contractor. Athol Daily News v. Board of Review of the Div. of Unemployment and Training, 439 Mass. 171, 175 (2003). If any of the prongs cannot be met, the hired worker (workers) is deemed an employee as a matter of law, regardless, for instance, of whether someone else provides the insurance or there exists a contract purporting to make that person an independent contractor. That is, if the hiring relationship according to the Independent Contractor Law makes this person an employee, the employee and employer can call the worker an independent contractor, but that is a misclassification.

The following provides details concerning the Independent Contractor Law analysis.

The ‘A’ Test

First, the individual must be "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." G.L. c. 149, § 148B(a)(1).

The first part of the test examines the degree of control and direction retained by the employing entity over the services performed. The burden is upon the employer to demonstrate that the services at issue are performed

1 The recent Superior Court decision in Monell, et al. v. Boston Pads, LLC, et al, C.A. SUCV2011-3756 (Suffolk Super. Ct. July 15, 2013) states that Real Estate Brokers in Massachusetts are not governed by the ABC test set out in Gen.L. c. 149, §148B and are empowered to enter into independent contractor relationships pursuant to Gen.L. c. 117, §87RR. This decision is presently being appealed.
free from its control or direction.

*Commissioner of the Division of Unemployment Assistance v. Town Taxi of Cape Cod*, 68 Mass.App.Ct. 426, 434 (2007). In determining whether a worker is actually free from the employer's direction or control, courts look beyond the worker's job description and consider whether the worker's activities are carried out with minimal instruction from the employer. In a true employer-independent contractor relationship, the employer tells the independent contractor the objective of the task; the independent contractor uses his or her skill and experience to determine how best to achieve the stated objective. The independent contractor then carries out the task under his or her own direction and with minimal intrusions by the employer. Factors which aid the court in determining independent contractor status include whether the worker determines his or her work hours, the method by which he or she undertakes the employment task, and whether the work is done pursuant to a written contract for services. In other words, courts look to who controls the means and methods of the work.

**The ‘B’ Test**

Second, an independent contractor must perform work that is "outside the usual course of business of the employer." G.L. c. 149, § 148B(a)(2). There is no precise definition for "usual course of business." Court inquiries are fact-intensive and unique to each case. Generally, a worker must perform services that are "part of an independent, separate and distinct business from that of the employer" in order to be properly classified as an independent contractor. *American Zurich v. Dept. of Industrial Accidents*, 2006 WL 2205085, *4 (Mass. Super. 2006)(Troy, J.). The Attorney General’s Office, through a 2008 Advisory, has provided further classification as to this test. For example, if the employer offers a given service to its customers, it cannot classify the worker who provides that service as an independent contractor. This is true whether the employer offers the service on a limited basis or only at certain times of the year. For instance, if the employer is a construction company that specializes in installing roofs, but occasionally repoints chimneys for its customers, the employer cannot classify the mason who repoints chimneys as an independent contractor. Instead, the employer either should classify the mason as an employee of the company or direct the customer to contract directly with the mason. *See, e.g., Coverall v. Division of Unemployment Assistance*, 447 Mass. 852, 857-58 (2006).

**The ‘C’ Test**

Third, an independent contractor must be "customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed." G.L. c. 149, section 148B(a)(3).

Under the third prong, the court is to consider whether the service in question could be viewed as an independent trade or business because the worker is capable of performing the service to anyone wishing to avail themselves of the service or, conversely, whether the nature of the business compels the worker to depend on a single employer for the continuation of the services.

consider (1) whether a worker is capable of performing the service to anyone wishing to avail themselves of the services and (2) whether the nature of the business compels the worker to depend on a single employer for the continuation of the services

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Massachusetts courts have concluded that G.L. c. 149, § 148B “is a strict liability statute.” Somers v. Converged Access, Inc., 454 Mass. 582, 591 (2009). Consequently, courts will not consider the agreement between the employer and the worker or the intent of the employer. Id. “Good faith or bad, if an employer misclassifies an employee as an independent contractor, the employer must suffer the consequences.” Id. The only considerations when determining whether someone is an employee or independent contractor are the three prongs outlined in the statute. Awuah v. Coverall North America, Inc., 707 F.Supp.2d 80, 84 (2010). Legally, it does not matter if the employee benefitted from being classified as an independent contractor because he was paid more than he would have been paid as an employee. Somers, 454 Mass. at 591. Similarly, courts will not consider (1) the failure to withhold federal or state income taxes; (2) the failure to pay unemployment compensation contributions; (3) the failure to pay workers compensation premiums with respect to an individual’s wages; (4) a worker's decision to obtain workers compensation insurance; or (5) whether the worker is a sole proprietor or partnership. G.L. c. 149, section 148B(b) and 148B(c). Indeed, if these things are occurring and the worker is legally an employee — not an independent contractor — these facts would not convert the worker to an independent contractor, they would create liability for the employer for failing to comply with more statutes.

In determining whether there has been a violation, courts will interpret those statutes liberally “with some imagination of the purposes which lie behind them.” See Depianti v. Jan-Pro Franchising Intern., Inc., 465 Mass. 607, 620, quoting Lehigh Valley Coal Co. v. Yensavage, 218 F. 547, 553 (2d Cir. 1914); Boston v. Commonwealth Employment Relations Bd., 453 Mass. 389, 391 (2009); DiFiore v. American Airlines, Inc., 454 Mass. 486, 490 (2009); Batchelder v. Allied Stores Corp., 393 Mass. 819, 822 (1985)(Remedial statutes such as the independent contractor statute are “entitled to liberal construction.”).

The purpose of the independent contractor statute is ‘to protect workers by classifying them as employees, and thereby grant them the benefits and rights of employment, where the circumstances indicate that they are, in fact, employees.’ Depianti, 465 Mass. at 620, quoting Taylor v. Eastern Connection Operating, Inc., 465 Mass. 191, 198 (2013). Consequently, where an employment statute does not directly address a particular issue, Massachusetts courts err on the side of the worker, not the employer. See, e.g., id., quoting Psy-Ed Corp. v. Klein, 459 Mass. 697, 708 (2011)(“In light of the statute’s broad remedial purpose, ‘it would be an error to imply…a limitation where the statutory language does not require it.’”); General Elec. Co. v. Department of Envtl. Protection, 429 Mass. 798, 803 (1999).

Massachusetts Gen.L. c. 149, § 148B empowers the Attorney General to enforce its statutory mandates. To that end, the Attorney General considers a number of factors when
determining whether an employer has misclassified an employee. The Attorney General's Office has promulgated a list of factors which it considers "strong indications of misclassification." See An Advisory from the Attorney General's Fair Labor Division on G.L. c. 149, § 148B. Those factors include the following:

1. Individuals providing services for an employer that are not reflected on the employer's business records;
2. Individuals providing services who are paid "off the books," "under the table," in cash or provided no documents reflecting payment;
3. Insufficient or no workers' compensation coverage exists;
4. Individuals providing services are not provided 1099s or W-2s by any entity;
5. The contracting entity provides equipment, tools, and supplies to individuals or requires the purchase of such materials directly from the contracting entity; and
6. Alleged independent contractors do not pay income taxes of employer contributions to the Division of Unemployment Assistance.

B. Penalties for Violations

An employer violates G.L. c. 149, section 148B when it misclassifies an employee as an independent contractor and is potentially liable for considerable potential penalties when this occurs. Additionally, misclassification can lead to other statutory violations, for which the employer will be liable. Those laws include (1) the wage and hour laws (G.L. c. 149); (2) the minimum wage law (G.L. c. 151); (3) overtime law (G.L. c. 151); the record keeping requirements set forth in G.L. c. 151, § 15; (4) payroll tax laws (G.L. c. 62B); (5) worker's compensation requirements of G.L. c. 152, § 14. That is, where the worker is legally an employee, pursuant to the Independent Contractor Law, not an independent contractor, the employer is responsible for violations of any of these statutes even if the employer is calling the worker an independent contractor.

An employer who violates the Massachusetts Independent Contractor Law by misclassifying a worker as an independent contractor as opposed to an employee, may be held civilly and criminally liable. First, the employer may be held civilly liable to the misclassified worker. The statute incorporates by reference, G.L. c. 149, § 29C, which grants a prevailing plaintiff treble damages, attorney’s fees and costs. Other penalties include (1) income tax liability which should have been withheld from wages; (2) contributions pursuant to the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and the Massachusetts Unemployment Insurance Law (G.L. c. 151A); and (3) workers compensation insurance premiums.

Additionally, G.L. c. 149 empowers the Attorney General to impose civil and criminal penalties against the business as well as "the president and treasurer of a corporation and any officer or agent having the management of the corporation or entity." G.L. c. 149, § 148B(d). For instance, the Attorney General may impose fines up to $25,000 or imprisonment for up to one year for a first offense, and fines up to $50,000 or imprisonment for up to two years for subsequent violations. G.L. c. 149, § 27C. Non-willful violations can result in fines up to $10,000 or imprisonment for up to six months for a first offense, and fines up to $25,000 or imprisonment for
up to one year for subsequent violations. G.L. c. 149, section 27C. The Attorney General also may debar an employer who violates the statute from public and construction works contracts. G.L. c. 149, § 148B(d) and c. 149, § 27C(a)(3).

Due to the strict civil and criminal penalties for violations of the Massachusetts Independent Contractor Law, it is imperative that Massachusetts businesses not misclassify workers. This is especially important considering litigation over fair labor standards in Massachusetts has increased 68.8% over the past year, according to a study by Massachusetts Lawyers Weekly.

Ensure that those in your company understand this law. There simply is too much risk here to take a chance.