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New Rules for Bay State Independent Contractors

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Massachusetts lawmakers last year enacted Chapter 93 of the Acts of 2004, which replaced the prior law regulating the use of independent contractors. The new state law is stricter than the federal standards of the Fair Labor Standards Act and the Internal Revenue Service in that it excludes far more workers from independent contractor status than the federal tests.

Because independent contractor designation carries implications for unemployment insurance, workers' compensation, taxation, overtime, and benefits, Massachusetts employers will need to reexamine many of their work relationships to ensure that they are complying with the law. Here's a look at its significant points:

The law presumes that a work arrangement is an employer-employee relationship unless the party receiving the worker's services can prove that:

- The worker is free from the presumed employer's control and direction,
- The service performed by the worker is outside the scope of the employer's usual course of business, *and*
- The worker is customarily engaged in an independent trade, profession, or business.

This rigid, three-part test, Attorney General Tom Reilly points out, is unlike the criteria established under federal and most state laws in that its standards are not flexible and may not be balanced according to the circumstances of the work arrangement. In contrast, this new state law requires proof that the worker meets all three of its requirements. Otherwise, the worker is deemed an employee for purposes of the state's employment laws.

Reilly recently issued an advisory explaining the changes, which is available on his website at <http://www.ago.state.ma.us/filelibrary/148BAdvisory.pdf>.

Enforcement. Employers that improperly treat a worker as an independent contractor when the person does not meet all three tests is potentially liable for violations of state wage and hour, taxation, and workers' compensation statutes. The penalties for inadvertent noncompliance with the law have been increased and include criminal sanctions.

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