

Out-of-State Workers May Bring Suit under Massachusetts Independent Contractor Statute

Written by Christopher Feudo, Michael L. Rosen

May 31, 2013

Last week, the Massachusetts Supreme Judicial Court (SJC) held that plaintiffs who live and work outside of Massachusetts for Massachusetts-based companies can sue for purported violations of Massachusetts' independent contractor law. In *Taylor v. Eastern Connection Operating, Inc.*, the SJC held that out-of-state plaintiffs may bring suit where a written contract between the parties contains an enforceable Massachusetts choice of law and forum selection provision, and where Massachusetts law is not contrary to a fundamental policy of the state where the plaintiffs live and work. This ruling is particularly important because the Massachusetts independent contractor law sets more stringent criteria for engaging a worker as an independent contractor than many other states' laws.

The SJC's ruling arises out of a case brought by three individuals who live in New York but work for a courier company headquartered in Massachusetts. Under their contracts, they were classified as "independent contractors" who were to perform pickup and deliveries exclusively in New York. The contracts further provided that the contract and all rights and obligations of the parties were to be construed under Massachusetts law and that any lawsuits between the parties were to be brought in a court in that jurisdiction.

In 2010, the plaintiffs brought a class-action lawsuit in Massachusetts Superior Court against the courier company, alleging that they were misclassified as independent contractors rather than employees in violation of the Massachusetts independent contractor statute and that they were not paid wages and overtime in violation of the Massachusetts wage statute and overtime statute. The Superior Court dismissed the lawsuit, concluding that the Massachusetts independent contractor statute did not apply to non-Massachusetts residents working outside of Massachusetts and that, as independent contractors, the wage and overtime statutes did not apply to the plaintiffs.

On appeal, the SJC held that the choice-of-law provision in the contracts was enforceable, finding both that Massachusetts has a "substantial relationship" to the transaction between the plaintiffs and defendant given the defendant's Massachusetts headquarters, and that the application of Massachusetts law would not contravene a fundamental policy of New York. Given the parties' agreement, the Court concluded that the plaintiffs could assert a claim under the Massachusetts independent contractor statute. Furthermore, because the plaintiffs could ultimately be deemed employees rather than independent contractors under the statute, the plaintiffs may also be able to assert claims under the Massachusetts wage and overtime statutes.

The SJC's decision greatly expands the potential liability of Massachusetts companies that have independent contractors and employees who live and work outside of Massachusetts. The decision makes clear that Massachusetts companies are not immune from claims under Massachusetts wage-and-hour statutes simply because their workers live and work outside of the Commonwealth.

In light of the SJC's decision, Massachusetts-based companies that have independent contractors or employees living and working outside of Massachusetts should carefully review their contracts and employee handbooks to assess whether those documents leave them exposed to potential liability under Massachusetts law.

RELATED PRACTICES

■ [Labor & Employment](#)

This communication is intended for general information purposes and as a service to clients and friends of Foley Hoag LLP. This communication should not be construed as legal advice or a legal opinion on any specific facts or circumstances, and does not create an attorney-client relationship.

United States Treasury Regulations require us to disclose the following: Any tax advice included in this document was not intended or written to be used, and it cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code.

Attorney advertising. Prior results do not guarantee a similar outcome. © 2017 Foley Hoag LLP. All rights reserved.