

# EMPLOYMENT LAW ALERT



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## **SWEEPING CHANGES TO MASSACHUSETTS INDEPENDENT CONTRACTOR LAW REQUIRE REEVALUATION OF EMPLOYEE STATUS**

Last July, with little fanfare, the Massachusetts legislature enacted a sweeping change in the definition of "independent contractor." The implications of this amendment, which substantially narrows the class of persons who may be treated as independent contractors, are wide ranging.

The presumption of employee status can be overcome only by meeting the following rigid, three-part test:

First, the individual must be free from "control and direction". According to the Attorney General's advisory, the individual must carry out the services with independence and autonomy. The Attorney General's Office also requires a written contract or job description establishing that the job is free from control and direction.

Second, the job or service performed by the employee must occur outside the usual course of business of the employer. Under a literal interpretation of this language, a worker must be classified as an employee, not as an independent contractor, whenever he or she performs the same type of work that is part of the normal service delivered by the employer. This is a significant departure from earlier law and could disqualify many workers from independent contractor status.

Third, the individual must work routinely in an independently established trade, occupation, profession or business of a similar nature to the service performed. Under this requirement, it is unlikely that an individual could qualify for independent contractor status if the individual works exclusively for one company over a long period of time.

Misclassification can have serious consequences. Another law, which went into effect in September 2004, increases the potential penalties for violations of this amendment. The Attorney General is authorized to issue civil citations or institute criminal prosecution for both intentional and unintentional violations. The statute allows for criminal fines up to \$50,000, civil penalties up to \$25,000, as well as imprisonment and debarment from working on public projects. The statute also allows individuals to file civil actions for treble damages and attorneys' fees. Potential liability extends to the employer itself, as well as to the employer's president and treasurer, and any officer or agent serving in a management capacity.

Employers should review the status of each of their independent contractors to ensure that they are complying with this new law. If you have any questions, please contact a member of Prince, Lobel's Employment Law Group at (617) 456-8000 or on the web at [www.plgt.com](http://www.plgt.com)