

Making It in Massachusetts: News that Could Affect Your Business

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Changes to Massachusetts Wage Laws and Use of Independent Contractors

The Massachusetts wage laws had always provided for damages against those violators of the Massachusetts wage laws. Moreover, it was believed that the law provided for triple damages related to wage violations.

In 2005, the Supreme Judicial Court held that a judge's award of triple damages for a violation of the weekly wage law was discretionary rather than mandatory, even though the intent of the law was to award triple damages for violators. The Massachusetts legislature passed a new law on April 14, 2008 to clarify the old law; it reiterated that the intention of the original law was to award triple damages.

There are numerous violations that can occur related to the Massachusetts wage law. With the newest change to the Massachusetts wage law, the violation that appears to cause the most problems is the classification of whether an individual is an "employee" or an "independent contractor".

The Massachusetts Independent Contractor Law provides for a three-prong method to determine if an individual is an independent contractor. The first test is that the individual is free from control and direction in connection with the service and contract.

Next, the individual's service must be performed outside the employer's usual course of business.

And third, the individual performing the service is independently engaged in the same business as the services performed.

The underlying presumption is that all workers are employees, and it is up to the employer to substantiate that an individual is an independent contractor. Massachusetts law now requires that all individuals meet the three tests to be classified as an independent contractor.

The second test, that the service is provided outside the usual course of the employer, is the one where individuals could be easily be misclassified as employees and not independent contractors. This does not mean that the first and third tests can be overlooked as to their importance in determining the proper classification of an individual.

The classification of an individual as either an employee or independent contractor should initially be determined when a new individual is hired, and then continuous evaluations should be an ongoing process.

Under the new law, there is a violation when two acts occur: (1) The individual is misclassified, and (2) a wage law is violated.

With the potential for triple damages, the distinction is even more critical for Massachusetts employers to make.

Sweeping Reform of Massachusetts Tax Statutes

On July 3, 2008, the governor signed legislation known as "An Act Relative to Tax Fairness and Business Competitiveness". This modified the rules regarding a corporation's tax status, and included



the adoption of combined reporting for those entities involved in a unitary business. This is a substantial modification from the past, when businesses reported on a separate basis.

The statute defines a unitary business as the activities of a group of two or more corporations under common ownership that are sufficiently interdependent, integrated or interrelated through activities which provide mutual benefits and produce a significant sharing or exchange of value among or between the parts. The term unitary business shall be construed to the extent permitted under the United States Constitution.

Common ownership is defined as more than 50 percent of the voting control of each member of the group owned by the common owner or owners. A group of corporations under common ownership may be engaged in one or more unitary businesses.

Membership in the combined group includes corporations that are subject or would be subject to tax in Massachusetts. The members of the combined group who are subject to the tax under this particular chapter, may elect to have their apportioned share of the taxable income or loss of the combined group based on the income or loss apportioned to each member.

Each member of the combined group is jointly and severally liable for the tax due from any taxpayer member, including interest and penalties, to the extent permitted under the United States Constitution.

Adoption of Federal Rules for Entity Classification

Under current law, Massachusetts uses its own classification criteria for tax business entities. Currently, corporate trusts are not classified as corporations for Massachusetts purposes, are taxed at lower rates, and avoid the corporate excise tax. Moreover, since the IRS adopted the "check-the-box" rules for federal income tax purposes, Massachusetts could classify the entity as a corporate trust or partnership.

Massachusetts will now follow the federal rules for classification of an entity. Thus, an entity classified as a corporation, partnership, or disregarded entity for federal tax purposes will be classified as such for Massachusetts tax purposes.

The above provision is effective January 1, 2009. The Department of Revenue has been charged with the responsibility of preparing transition rules for entities whose classification will be changed as a result of the legislation.

Reduction in Income and Excise Taxes on Gross Receipts

Effective for tax years beginning January 1, 2010, the excise tax rate will be reduced on an annual basis until 2012. The income tax rate will also be reduced in stages beginning in 2010 and culminating in 2012. After 2012, the rate will stay constant at the new reduced rate.

If you're not sure how these changes affect your business, give us a call. We're always ready to help.

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