

Employers toe fine line to avoid misclassification liability

PS&H employment partner, Michael Gamboli, was quoted by Massachusetts Lawyers Weekly and Rhode Island Lawyers Weekly in their article, *Employers toe fine line to avoid misclassification liability*.

Michael commented on the ABC test, a three-factor test for determining independent contractor status in MA. He stated that the test is “extremely restrictive” and defendants often have a hard time showing that the plaintiff performed work outside the regular course of the company’s business.

He continued to explain, “the nightmare situation is where you have an accounting firm that needs to outsource accounting work to some independent contractors who may be taking on work a couple hours here or there”. This situation occurred in the recent case, *Weiss v. Loomis Sayles & Co., et al*, where an information technology consultant who claimed the defendant employer, a financial services company, misclassified him as an independent contractor. Although not involved in the case, Michael suggests that MA employers be aware that the ABC test requires employers to prove each of the statutory factors to establish a plaintiff’s independent contractor status.

However, RI law follows the multi-factor approach. The approach encompasses the ABC test factors, and examines additional factors such as the extent to which the services rendered are an integral part of the company’s business, the permanency of the relationship, and the company’s degree of control over the worker.

Michael states, “it is essential to have a simple one- or two-page contract that clearly spells out that the individual is an independent contractor, even if a court may not find it dispositive. The agreement should also include an arbitration clause that includes a class-action waiver”.

Click [here](#) to read the full article published by RI Lawyers Weekly which discusses recent cases involving independent contracting matters and best practices for employer to be aware of.

Date Created
May 17, 2018