

Massachusetts SJC Holds that Independent Contractor Statute Applies to Franchisees

On March 24, 2022, the Massachusetts Supreme Judicial Court (“SJC”) determined that the Massachusetts independent contractor statute (G. L. c. 149, § 148B) applies within the franchisor-franchisee context and does not conflict with a franchisor’s disclosure obligations under federal law.

In the case of *Patel v. 7-ELEVEN, Inc.* (“7-Eleven”), several franchisees operated 7-Eleven convenience stores throughout Massachusetts in accordance with franchise agreements entered into with 7-Eleven that classified the franchisees as independent contractors. The franchisees filed a lawsuit against 7-Eleven alleging that 7-Eleven misclassified them as independent contractors in violation of the Massachusetts independent contractor statute, which mandates that all individuals performing any service must be classified as employees unless the entity for whom the individuals perform their services can prove each of the following (commonly referred to as the “ABC test”):

1. The individual is free from control and direction in connection with the performance of the service, both under his contract for the performance of service and in fact; and
2. The service is performed outside the usual course of the business of the employer; and,
3. The individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.

The Federal District Court concluded that the Massachusetts independent contractor statute did not apply to franchisor-franchisee relationships because there is an “inherent conflict” between the first prong of the ABC test (the “control” prong) and Federal Trade Commission (“FTC”) regulations governing franchises collectively known as the “FTC Franchise Rule.” The argument of 7-Eleven, with which the District Court agreed, was essentially that the FTC Franchise Rule ‘required’ 7-Eleven to exert a “significant degree of control over the franchisee’s method of operation,” or to “provide significant assistance in the franchisee’s method of operation,” which would make it impossible for any franchisor to comply with the first prong of the ABC test requiring the alleged employee/franchisee to be “free from control and direction [...]” Because of this alleged conflict in the two laws, 7-Eleven argued that the state independent contractor law must not apply within the franchise relationship.

The franchisees appealed the District Court’s decision to the First Circuit Court of Appeals (“First Circuit”), which in turn asked the SJC to determine whether the ABC test applies to the franchisor-franchisee context, specifically when the franchisor must also comply with the FTC Franchise Rule (if an undecided issue of state law, such as “does the state independent contractor law apply to franchisees?”, is pending in a federal court, it is not unusual for the federal court to “certify” or ask the highest court in the state to make the decision, which is what happened here).

In reaching its holding that the ABC test does indeed apply to the franchisor-franchisee context, the SJC first compared the independent contractor statute, which neither expressly includes nor expressly excludes franchisees, with other wage and employment-related statutes that do explicitly exclude certain categories of workers. The SJC considered the fact that franchisees were not specifically excluded from the independent contractor statute, coupled with the statute’s broad remedial purpose, as evidence of the Legislature’s intent that the statute was meant to apply to franchisees.

As for the purported conflict between the control-prong of the ABC test and the FTC Franchise Rule identified by the District Court, the SJC found no such conflict to exist. The SJC described the FTC Franchise Rule as simply a pre-sale disclosure rule and explained that complying with it does not *require* that a franchisor exercise any particular degree of control over a franchisee. The SJC discussed that a franchisor can comply

with the FTC Franchise Rule by making the prescribed disclosures, and in situations where a franchisee is deemed an employee under the independent contractor statute, the franchisor can still comply with its obligations under the wage and hour statutes notwithstanding the FTC Franchise Rule.

The SJC went on to explain that even under circumstances wherein a franchisor elects to exert a “significant degree of control over the franchisee’s method of operation” as permitted by the FTC Franchise Rule, the SJC noted that the franchisee may nonetheless be “free from control and direction” with regards to the performance of their services, meaning that the franchisor may still be able to meet its burden under the control-prong of the ABC test. In other words, a franchisor’s exertion of a significant degree of control over a franchisee’s method of operation does not necessarily mean the franchisee must be classified as an employee.

It remains to be seen whether the 7-Eleven franchisees are indeed employees. Remember, the case is pending in the First Circuit, which simply asked the SJC to decide the very specific question of Massachusetts law as to whether the ABC test applied or not. Since the SJC answered in the affirmative, the case is now back with the First Circuit, which will likely send the case back to the District Court. However, in light of the *7-Eleven* case, it is vital that franchisors understand and comply with their obligations under the Massachusetts independent contractor statute. Misclassifying workers may result in severe civil and criminal consequences, such as payment of unpaid wages, liquidated damages and reasonable attorneys’ fees, the imposition of a fine, and possibly even imprisonment.

The [Employment & Labor Practice Group](#) at [Partridge Snow & Hahn](#) is available to answer questions about the Massachusetts independent contractor statute and the proper classification of workers.

Date Created

March 31, 2022