



# Redefine Independent Contract Law

## Changes to the Independent Contractor Law Continue to Threaten Businesses in the Commonwealth

BY JON B. HURST

RAM continues to work with a coalition of partners trying to amend a six year old law that in name, was intended to further regulate public construction, but in practice, brought chaos and confusion to the employer community as a whole. At issue is the use of independent contractors. According to an advisory issued by the Attorney General's office, the changes to the Independent Contractor Law "excludes far more workers from independent contractor status than are disqualified under the traditional state and federal law tests, including the 20 Factor Test set forth in the Internal Revenue Service ("IRS") Revenue Ruling 87-41, the Fair Labor Standards Act ("FLSA") and the Massachusetts common law." RAM has advocated in support of H.1844 which redefines the circumstances under which an individual is considered an independent contractor. We continue to work with the committee and coalition on this important legislation.

Since the change in the law took place as part of a public construction reform, there was no debate or proper deliberation as to the widespread impact this change would have on every industry and every employer in the Commonwealth. The Legislature's intent may

have been to address misclassification issues where employees were improperly being treated as independent contractors, however, the far reaching application of the new law has brought about significant ramifications on honest law abiding employers who operate under legitimate business models.

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Virtually every business in Massachusetts that previously hired independent contractors and every individual that worked as an independent contractor have been negatively affected by the change in the law. From the franchisee owner who operates independently from the franchisor, to the interior decorator hired to design a store layout, to the maintenance company hired to clean or repair equipment in a store. Many of our members, especially the small business owners, rely upon the expertise of indepen-

dent contractors and the flexibility of hiring workers on an as-needed basis.

Particularly troubling to franchises operating in Massachusetts is the recent decision granting summary judgment to the plaintiffs in *Awuah v. Coverall North America, Inc.* In his decision, Judge William G. Young asserts that there is no distinction between a franchisor's business and that of its franchisees. The standard franchise model has allowed millions of Americans to own their business. Entrepreneurs make a conscious decision to not be someone's employee. The decision based on the 2004 changes to the law clearly threatens the franchise model.

It is time we all work together to send a message to Beacon Hill – please fix the mistake that stands to threaten every honest business owner in Massachusetts. Now is the time to encourage growth and employment opportunities. Please stop punishing hard working employers in a misguided attempt to take down a few "bad actors". ■

Jon Hurst is president of the Retailers Association of Massachusetts (RAM). As the chief executive officer of the 2,000 member statewide trade association, Hurst manages the staff, business affairs, member services, public affairs and governmental affairs of the organization. He also serves as chairman of the board of directors of the Massachusetts Retail Merchants Workers Compensation Group, Inc., a self insurance group organized by RAM in 1991.