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FEDERAL COURT HOLDS COMPANY MISCLASSIFIED FRANCHISEES AS INDEPENDENT CONTRACTORS

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As we have previously reported, Massachusetts wage and hour laws strongly disfavor the classification of individuals as independent contractors rather than employees. Massachusetts General Laws chapter 149, § 148B presumes that workers are employees, unless the alleged employer satisfies a strict, three-pronged test: (1) the individual is free from control and direction in connection with the performance of a service; (2) the individual performs a service that is outside the usual course of the employer's business; and (3) the individual is customarily engaged in an independently established trade or profession. A recent decision by the U.S. District Court for the District of Massachusetts is a reminder that Massachusetts courts will scrutinize the classification of individuals as independent contractors. In *Awuah v. Coverall North America, Inc.*, the federal court held that a group of franchisees were misclassified as independent contractors under Massachusetts law.

In that case, Coverall had developed and licensed a janitorial cleaning service "system" to thousands of franchisees across North America. Franchisees had to complete mandatory training programs and wear approved uniforms and badges. Coverall provided the franchisees with initial equipment and supplies. Under the franchise agreement, Coverall had the exclusive right to perform billing and collection services for the franchisees. For each cleaning service, the company received management and royalty fees. Prior to May 2009, all customer contracts were with Coverall and the franchisee could not be a party to the contract, unless the customer specifically requested a franchisee.

In 2007, a group of franchisees sued Coverall, alleging that they had been misclassified as independent contractors and that they were owed wages and overtime. On plaintiffs' motion for partial summary judgment, the Court agreed that the franchisees were in fact employees under M.G.L. ch. 149, § 148B. Focusing on the second prong of the independent contractor test, the Court determined that Coverall could not establish that the cleaning services performed by the franchisees were outside its usual course of business. While Coverall argued that it was merely a franchisor rather than a commercial cleaning business, the Court explained that franchising was not in itself a business, but rather a means to distribute goods or services to final end users in a cost effective manner. Further, because Coverall contracted directly with customers, the Court found that the company sold cleaning services, the same services provided by the plaintiffs. Thus, the Court concluded that the plaintiffs should have been classified as employees.

Awuah makes clear that Massachusetts courts will look beyond labels to determine whether an arrangement resembles a traditional employee-employer relationship. While the decision was driven by the particular arrangement between the cleaners and the company, the classification of individuals as franchisees will not by itself insulate the franchisor from claims

of misclassification. Companies that utilize franchises in Massachusetts should carefully assess their arrangements with franchisees to ensure that they are legitimate, arms-length business transactions.