

Locke Lord QuickStudy: Some Individuals Acting as Franchisees Are Independent Contractors Under Massachusetts' Strict Classification Test

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7-Eleven has been defending its position for years that individuals operating as franchisees of its retail stores in Massachusetts are not employees under that state's strict Independent Contractor Law but rather are exempt from the state's test for independent contractor status and therefore are not subject to Massachusetts labor and employment laws. Yesterday, the Supreme Judicial Court of Massachusetts, the highest court in that state, concluded that franchisees are not covered by the state's IC Law where they perform no services for the franchisor but merely fulfill their contractual obligations under the parties' franchise agreement and remit to the franchisor a percentage of the franchise's gross profits. The Court made it clear, however, that not all franchisees are exempt from the state's IC law.

Some franchisees, the Court noted, are indeed employees under the state's test for IC status, referring to its earlier decision in a case involving janitors that operated franchises, yet were held to be employees of Coverall where the janitors serviced Coverall's clients. Thus, one of the key takeaways from this case is that if the services provided by the franchisees are for their own customers (as is the case with the 7-Eleven franchisees) and not for the franchisor or its customers, the strict Massachusetts IC test is not applicable. *Patel v. 7-Eleven, Inc.*, No. SJC-13485 (Sept. 5, 2024).

The issue of whether individuals operating franchises are employees or independent contractors is not, however, governed only by state laws akin to the Massachusetts Independent Contractor Law. Many state IC laws have tests for IC status closer to the multi-factor test for IC status under the federal Fair Labor Standards Act (FLSA). The analysis of the strict IC law in Massachusetts by the Supreme Judicial Court in the *7-Eleven* case may or may not be deemed applicable by courts adjudicating cases under the FLSA and other state laws and may lead to judgments against franchisors or large settlements with franchisees. One such lawsuit by janitorial franchisees led to a \$30 million settlement in May of this year, as reported in one of our [blog posts](#). As noted above, even the Massachusetts Supreme Judicial Court has ruled that some franchisees are employees under that state's test for IC status. Franchisors may therefore wish to use a process such as [IC Diagnostics](#) (TM) to enhance their compliance with IC laws and minimize the likelihood of lawsuits and their exposure to IC misclassification liability.

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