

June 4, 2019

Senator Patricia D. Jehlen, Senate Chair
Representative Paul Brodeur, House Chair
Joint Committee on Labor and Workforce Development
State House
Boston, MA 02133

Re: AIM Letter in Support of various bills to reform the independent contractor law

Dear Chair Jehlen, Chair Brodeur, and Committee members:

Associated Industries of Massachusetts (AIM), on behalf of its member companies, submits this testimony to the Joint Committee on Labor and Workforce Development in support of various bills to reform the Massachusetts independent contractor law.

AIM has testified on this topic and participated in several working groups since the original legislative change to the Massachusetts Law since 2004. Should the committee seek to advance legislation to clarify for employers and employees, we are ready to provide additional feedback. For this new legislative session, we wish to highlight three key issues.

1. The new Massachusetts paid family and medical leave law requires employers to notify, contribute and count certain independent contractors as part of their overall tax and benefit obligations. Which of the four state independent contractor standards will the Office of the Attorney General, the Department of Revenue or the Department of Family and Medical Leave use when auditing employers for classification or tax compliance?
2. Employers, employees and the state government can't comply with the Massachusetts law. How can we fix wage theft and misclassification issues without a clear law on independent contractors?

"Gants wrote that this is confusing for businesses and also for workers, who "must struggle to understand and assert their rights." For example, a worker might be eligible to receive minimum wage and overtime pay, but not workers' compensation.

Several states have taken steps to harmonize their laws. "Whether such reforms would be appropriate in Massachusetts is, of course, a question for the Legislature and, as this case illustrates, a pressing one -- which I invite the Legislature to address," Gants wrote.

But Gants noted the confusion around the independent contractor law, which can result in workers being misclassified. There are at least four legal standards for determining whether someone is an independent contractor or an employee, depending on the context."

Thank you for taking AIM's position into consideration. We appreciate the opportunity to comment on these and several other matters currently pending before the committee.

As always, should you have any questions please feel free to contact me directly at 617-262-1180 or bmacdougall@aimnet.org.

Sincerely,



Brad MacDougall
Vice President for Government Affairs
Associated Industries of Massachusetts (AIM)

MassLive

SJC justices urge lawmakers to update independent contractor law

Posted May 10, 2018



Bundles of newspapers are readied for delivery by independent contractors. (The Republican file photo)

Comment

By **Shira Schoenberg** | sschoenberg@repub.com

BOSTON -- A newspaper delivery woman injured on the job was an independent contractor who is not eligible for workers' compensation, the Supreme Judicial Court ruled Thursday.

But several of the justices urged the Legislature to update the state's independent contractor law to alleviate confusion.

Chief Justice Ralph Gants, joined by two other justices in a concurring opinion, said the state laws today about who is an independent contractor and who is an employee result in "confusion and uncertainty."

"With so many different standards, it is difficult for employers to classify their workers properly, even where they intend to comply with the law," Gants wrote.

Ives Comargo worked for Publishers Circulation Fulfillment, a company that has contracts with numerous newspapers to deliver papers. In 2010 and 2011, Camargo fell twice while on the job. She had several periods of disability related to injuries from the falls, and she was fired in August 2012.

That led to a fight between Camargo and the delivery service's insurer over whether Camargo was an employee or an independent contractor and whether she was entitled to workers' compensation benefits.

Massachusetts high court case considers workers' compensation for newspaper deliverers

If a newspaper delivery person gets hurt on the job, should she be eligible for workers compensation? The answer depends on whether she is an independent contractor or an employee.

The case had potential ramifications for other newspapers that use deliverers who are independent contractors. The Republican uses numerous independent local distributors who then contract with adult carriers. The company does not use PCF.

In a decision written by Justice Scott Kafker, the SJC ruled that Comargo was an independent contractor.

"In working for PCF, (Comargo) was allowed to expand her business to deliver newspapers and other items for other companies; supplied all necessary instruments to complete her job at PCF, including using her own vehicle to make deliveries; hired substitutes to complete the job; purchased her own independent contractor work insurance; and filed taxes as an independent contractor," Kafker wrote.

The court found that, under state law, independent contractors are not eligible for workers' compensation.

But Gants noted the confusion around the independent contractor law, which can result in workers being misclassified. There are at least four legal standards for determining whether someone is an independent contractor or an employee, depending on the context.

Gants wrote that this is confusing for businesses and also for workers, who "must struggle to understand and assert their rights." For example, a worker might be eligible to receive minimum wage and overtime pay, but not workers' compensation.

Several states have taken steps to harmonize their laws. "Whether such reforms would be appropriate in Massachusetts is, of course, a question for the Legislature and, as this case illustrates, a pressing one -- which I invite the Legislature to address," Gants wrote.

https://www.masslive.com/politics/2018/05/sjc_justices_urge_lawmakers_to.html