



# 7-Eleven Franchise Owners Not Deemed Employees Under Massachusetts Law

Insights

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A federal court recently ruled that 7-Eleven franchise owners are not employees of the franchisor, the latest development in a long-running legal saga challenging their status as independent contractors. However, this September 28 ruling follows an earlier decision from the Massachusetts Supreme Judicial Court in the same case, holding that some franchise owners might be employees under state wage and hour law – so the outcome could be different depending on the specific circumstances. What does your franchised business need to know about these recent rulings?

## Now I Know My A-B-Cs

In 2017, a group of 7-Eleven franchise owners sued 7-Eleven alleging their franchise agreements misclassified them as independent contractors in violation of the Massachusetts independent contractor law.

Massachusetts law differs from federal rules by using a three-pronged “ABC” test to determine whether someone is an employee or an independent contractor. The law presumes employment status if an individual performs services for a business. However, the business entity can counter that presumption by establishing all three of the following factors:

1. the individual is free from control and discretion in performing services;
2. the service is performed outside of the hiring entity’s usual course of business; 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.

If an employer is unable to satisfy *any* prong, then the individual is classified as an employee.

## How Did We Get Here?

In 2020, a federal court judge ruled in favor of 7-Eleven, holding that the Federal Trade Commission’s (FTC) Franchise Rule conflicted with the Massachusetts independent contractor statute, and therefore the independent contractor statute did not apply. The franchisees appealed to the First Circuit Court of Appeals, which acknowledged that the question of whether the FTC regulation conflicted with the independent contractor law had not yet been decided by the

Massachusetts Supreme Judicial Court (SJC). The First Circuit therefore asked the SJC to answer this question under Massachusetts law.

On March 24, 2022, the SJC held that the state's independent contractor law applied to the franchisor-franchisee relationship and did not conflict with the Franchise Rule. The court did not decide, however, whether 7-Eleven franchisees in this case are in fact employees, leaving that question for the federal court to decide in subsequent proceedings.

## **7-Eleven Franchisees Are Not Employees**

The First Circuit Court of Appeals sent the case back to the federal district court, which sided with 7-Eleven and effectively disposed of the franchise owners' misclassification claim. With respect to the first prong of the ABC test, the federal district court found in its most recent decision that 7-Eleven does not pay the franchise owners for performing services. To the contrary, 7-Eleven provides the franchise owners with a variety of support services in exchange for franchise fees and other charges, including:

- access to the 7-Eleven Operations Manual;
- licenses to operate 7-Eleven stores at specified locations;
- bookkeeping records and payroll software;
- store audits;
- maintenance of 7-Eleven equipment and performance of store repairs;
- advertising services; and
- assistance with procuring initial inventory, cleaning and stocking the store, and providing other services to prepare the store to open for business.

In so holding, the court rejected the franchise owners' argument that they provide services to 7-Eleven on account of the fact that the profit flowing to 7-Eleven is dependent on their stores' revenue. The court instead found that 7-Eleven and the franchise owners' mutual economic interest in the stores' sales and revenue are inherent in legitimate franchise relationships, and the independent contractor law does not prohibit those relationships.

But the lawsuit between 7-Eleven and the franchise owners is not over yet. 7-Eleven has pursued its own claims against the franchise owners and other third-party defendants in the action, including a breach of contract claim, which remain pending.

## **What's Next?**

Although the federal district court in this case found that 7-Eleven franchise owners are not employees, the Massachusetts ABC test remains difficult for businesses to overcome. In light of the

SJC's March 2022 holding that the ABC Test is applicable to franchisor-franchisee relationships, we expect to see future wage and hour litigation by franchise owners against their franchisors.

Franchisors should assess their agreements and relationships to determine whether a legitimate franchise relationship exists and ensure compliance with the ABC test if they want to continue using the independent contractor model.

We will continue to monitor this matter and any related developments. Make sure you are subscribed to Fisher Phillips' Insight system to ensure you gather the most up-to-date information about this case and other labor and employment issues affecting Massachusetts employers. If you have questions, please contact your Fisher Phillips attorney, the author of this alert, or any attorney in our Boston office.

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