

# MASSACHUSETTS APPEALS COURT BROADLY INTERPRETS “JOINT EMPLOYMENT” TO HOLD MANAGEMENT COMPANY LIABLE: 6 STEPS TO MINIMIZE YOUR RISK

Insights  
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The Massachusetts Appeals Court just rendered a decision that significantly broadens when one entity may be found to be a “joint employer” of another entity’s employees under state wage laws. The June 13 decision, coupled with guidance from an earlier decision by the Massachusetts Supreme Judicial Court, establishes a comprehensive framework you can follow to determine whether you might face joint employment trouble. What does your business need to know about the increasing likelihood you could be considered a joint employer – and what are six best practices you can follow to minimize your risk?

## How Did We Get Here?

In [\*Tran v. Jennings Road Management Corp.\*](#), the Massachusetts Appeals Court agreed that Jennings Road Management Corp. (JRM) was a joint employer of the plaintiff, Sakiroh Tran, a parts advisor at a Boston-area car dealership. The court’s June 13 opinion applied the totality of the circumstances test from [a 2021 Supreme Judicial Court opinion that we covered here](#), which considers four key factors:

1. The power to hire and fire employees
2. Supervision and control over work schedules or conditions of employment
3. Determination of the rate and method of payment

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## 4. Maintenance of employment records

The court found that JRM exercised substantial control over the conditions and economic aspects of Tran's employment, thereby meeting the criteria for joint employment.

The 2021 Supreme Judicial Court decision and its application in *Tran* provide a clear message to employers – Massachusetts Appellate Courts are interpreting the concept of "joint employment" quite broadly:

- **Power to Hire and Fire:** In *Tran*, the dispositive issue was the fact that JRM drafted the employee handbook used by Tran's actual employer. Thus, even passive involvement in drafting (but not enforcing) employment policies supported the joint employment finding.
- **Supervision and Control:** The JRM-drafted handbook also led the Court to conclude JRM had sufficient supervision and control. Even though JRM was not the entity making decisions impacting the employee, the actual employer's decisions were made in compliance with the handbook.
- **Rate and Method of Payment:** Entities involved in setting pay rates or methods, even indirectly, may be considered joint employers. The Court concluded that JRM's review of pay plans, influence over payroll decisions, and uniformity across other dealerships managed by JRM contributed to this factor weighing in favor of joint employment.
- **Maintenance of Records:** JRM's management of payroll systems and employment documentation likewise reinforced the Court's finding of joint employer status.

## 6 Best Practices to Avoid Joint Employment Findings

You can take several proactive steps to minimize the risk of being classified as a joint employer:

### 1. Clearly Define Contractual Relationships

- Draft contracts that explicitly state the independent nature of subcontractors, staffing agencies, or any related entities. Clearly outline the scope of services and responsibilities.
- Avoid clauses that suggest shared control over hiring, supervision, or employment terms.

## **2. Limit Direct Control Over Subcontractor Employees**

- Ensure that subcontractors, staffing agencies, and related entities retain primary control over their employees' hiring, firing, and daily management.
- Avoid involvement in the direct supervision or scheduling of subcontractor employees.
- Avoid uniform employment policies across related entities and subcontractors.

## **3. Maintain Operational Independence**

- Keep separate business operations and avoid sharing management or administrative functions with subcontractors.
- Ensure that any training or policy implementation is carried out by the subcontractor or agency, not the primary employer.

## **4. Implement Compliance Audits**

- Conduct regular audits of subcontractor agreements and practices to ensure compliance with independent contractor guidelines.
- Document compliance efforts and corrective actions taken to address any issues.

## **5. Educate Management and Staff**

- Train managers and supervisors on the importance of maintaining the independence of subcontractors and their employees.
- Develop policies that reinforce the separate roles and responsibilities of subcontractors.

## **6. Consult Legal Counsel**

- Regularly review subcontractor relationships and practices with legal counsel to ensure they align with current laws and regulations.
- Seek legal advice when drafting or revising contracts to mitigate joint employment risks.

## **Conclusion**

The recent decisions by the Appeals Court and SJC underscore the importance of understanding and correctly applying the joint employment test under Massachusetts law. By adopting best practices and maintaining clear boundaries in subcontractor relationships, employers can better navigate the complexities of joint employment and avoid unintended liabilities.

We will continue to monitor further developments and provide updates on this and other labor and employment issues affecting Massachusetts employers, so make sure you are subscribed to [Fisher Phillips' Insight system](#) to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney, the author of this alert, any attorney in our [PEO, Staffing, and Gig Workforce Practice Group](#), or any attorney in our [Boston office](#).