

7-ELEVEN FRANCHISEES ARE NOT EMPLOYEES UNDER MASSACHUSETTS LAW: 5 TIPS TO ENSURE COMPLIANCE AFTER LATEST RULING

Insights
Sep 30, 2024

The Massachusetts Supreme Judicial Court (SJC) just delivered a win for franchisor-franchisee relationships. Specifically, the court held that 7-Eleven franchisees are not performing a “service” for their franchisor, meaning the state’s strict “ABC” test for determining an independent contractor relationship does not even apply to the franchisee-franchisor relationship. This important ruling is the latest development in what has been a lengthy legal battle dating back to 2017, when a group of 7-Eleven franchisees sued the corporate franchisor alleging they were impermissibly classified as independent contractors rather than employees. Here’s what your franchised business needs to know and five tips to help ensure compliance with Massachusetts law.

Background

The initial lawsuit: Back in 2017, a group of franchisees sued 7-Eleven, alleging they were misclassified as independent contractors in violation of [the Massachusetts independent contractor statute](#), which is known as the ABC test. In 2020, *a federal judge sided with 7-Eleven, holding that the Federal Trade Commission’s Franchise Rule preempted the Massachusetts ABC test.*

Question for the SJC: When the franchisees appealed, the First Circuit asked for the SJC’s opinion on whether the state’s ABC test conflicted with the FTC’s rule. As we’ve previously discussed, in March 2022 the SJC [held that the Franchise Law did not conflict with the state law, opening](#)

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[the door for franchisees to be deemed employees under Massachusetts state law in certain instances.](#)

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Ruling in favor of 7-11: Following the March 2022 decision, the First Circuit sent the case back to the federal district court, which again [found for 7-Eleven and rejected the franchise owners' misclassification claim under the Massachusetts ABC test.](#)

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The ABC test: Under this test, employment status is presumed if an individual performs services for the business. The business entity, however, may then rebut that presumption by establishing all three of the following:

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A. the individual is free from control and discretion in performing services;

B. the service is performed outside of the hiring entity's usual course of business; and

C. 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.

A failure to establish any one of these three criteria means the individual must be classified as an employee rather than an independent contractor and would thus be entitled to various benefits under the law.

Using this test, the federal district court found that the franchisees did not qualify as employees, noting that instead of paying franchisees for services, 7-Eleven provides franchisees with a variety of benefits in exchange for franchise fees.

Another question for the SJC: The franchisees appealed once again, and again, the First Circuit turned to the SJC for guidance on whether the franchisees had even triggered the ABC test by performing a service for the parent company.

The September 2024 SJC Decision

The First Circuit asked the SJC the following question: Do the plaintiffs perform any service for 7-Eleven within the meaning of the independent contractor statute, where as here, they're performing various contractual obligations under the Franchise Agreement and 7-Eleven receives a percentage of the franchise's gross profits?

The SJC answered “no” to this question: The SJC emphasized that the circumstances of this case, which are typical of franchise relationships, indicated that the franchisees “operate independent stores not for 7-Eleven but rather for themselves.”

Plaintiffs’ argument rejected: The plaintiffs argued that because 7-Eleven receives revenue from the franchisees, and the franchisees are required to operate their convenience stores in compliance with certain obligations to 7-Eleven, they must be performing a service for the parent company. The SJC flatly rejected this argument, noting that “such an unreasonable construction” of the typical franchise relationship would make all typical franchise relationships presumptive employment relationships.

Independent business: Instead, the SJC found, by licensing the 7-Eleven playbook and paying a franchise fee, the franchisees have made the independent financial decision to forego the opportunity to operate the stores under their own name and goodwill. The franchisees’ decision to pay 7-Eleven for benefits, including franchisor efforts to advertise the brand, enforce quality standards, and engage in brand development, does not mean the franchisees perform services for the parent company. Rather, the franchisees operate their otherwise independent businesses within the context of a bargained for and mutually dependent relationship with the parent company.

What’s Next?

This case will return to federal court, which we anticipate will rule in 7-Eleven’s favor in finding that the franchisees are not employees. The SJC’s ruling is also expected to bolster other franchisees’ and franchisors’ understanding of their relationships and agreements with each other and may reduce the number of misclassification claims brought by franchisees operating under similar models.

5 Tips to Ensure Compliance with Massachusetts Law

While the decision is a win for franchisor-franchisee relationships, franchisors should not assume this will be the last challenge to the system, especially given Massachusetts’ stringent wage and hour laws. Here are five tips for franchisors to minimize the likelihood of employment misclassification claims from their franchisees:

- **Maintain Independent Franchise Structures:** Ensure franchisees operate their businesses independently to avoid misclassification as employees.
- **Adherence to Branding Standards:** Policing franchisee adherence to brand standards is essential but must not blur the independent contractor relationship.
- **Clear Franchise Agreements:** Contracts should clearly outline independent contractor status, ensuring franchisees understand their operational obligations.
- **Revenue Structuring:** Avoid revenue arrangements that mimic employer-employee relationships, such as maintaining direct control over labor compensation.
- **Monitor State and Local Laws:** Continuously review state-specific employment laws and adjust practices to avoid compliance risks.

Conclusion

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 authors of this alert, or any attorney in our [Boston](#) office.

The authors wish to thank Law Clerk [Jackson Estrin](#) for his work on this Insight.