



The *InterConnect* FLASH!

Practical Bursts of Information Regarding Critical Independent Contractor Relationships

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FLASH NO. 46 COURT DEALS CRUSHING BLOW TO MASSACHUSETTS INDEPENDENT CONTRACTOR LAW

On February 5, 2015, Judge Robert G. Stearns issued industry-favorable decisions in two worker classification suits pending in the United States District Court for the District of Massachusetts. Based upon the First Circuit Court of Appeals’ ruling in *Massachusetts Delivery Ass’n v. Coakley*, 769 F.3d 11 (1st Cir. 2014) (“MDA”), Judge Stearns withdrew a previous order and granted summary judgment in favor of FedEx Ground in *Schwann, et al. v. Fedex Ground Package System, Inc.*, and dismissed plaintiffs’ complaint against J.B. Hunt in *Remington, et al. v. J.B. Hunt Transport, Inc.* In both decisions, Judge Stearns instructed the Clerk of Courts to close the cases.

In *MDA*, the First Circuit reversed a decision that the Massachusetts Independent Contractor Law, Mass. Gen. Laws ch. 149, §148B (the “Massachusetts “ABC” Test”) was not preempted for motor carriers under the Federal Aviation and Administration Authorization Act of 1994 (“FAAAA”). The Massachusetts “ABC” Test provides that a worker is properly classified as an independent contractor if the employer can show that: (1) the individual is free from control and direction in connection with the performance of the service, both under his contract for the performance of service and in fact; and (2) the service is performed outside the usual course of the business of the employer, 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. Since the Massachusetts “ABC” Test could affect a motor carrier’s prices, routes, or services, and concerns a motor carrier’s transportation of property, the Court returned the case to the District Court to determine whether the statute satisfied the broad FAAAA preemption based upon the record of the case.

Guided by *MDA*, in *FedEx Ground* Judge Stearns considered whether the second prong of the “ABC” Test had a logical or even indirect effect on the delivery of services or the setting of rates. He concluded that the application of the “ABC” Test would “unquestionably have an impact on ‘price, route[s], [and] services’ by in effect proscribing the carrier’s preferred business model.” As a result, FAAAA preempted the second prong of the “ABC” Test.

Further, since the statute was enacted in the conjunctive (meaning each prong had to be satisfied to classify a worker as an independent contractor), the preempted second prong could not be severed from the statute as whole. Thus, Judge Stearns determined that the entire statute must be treated as preempted under FAAAA. In any event, Judge Stearns reasoned that enforcing either prong one or prong three of the “ABC” Test would lead to the same result, a preempted impact on a motor carrier’s choice of business model.

The District Court’s application of the *MDA* decision is very positive. We will continue to monitor these cases, as the *FedEx Ground* plaintiffs have already appealed Judge Stearns’ decision the First Circuit Court of Appeals. In the meantime, should you have any questions regarding these developments or how they may impact your independent contractor operations, we would be very happy to help.

(continued)

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