



DECEMBER 2021 NEWSLETTER

Many thanks to our clients, colleagues, and friends for their confidence, trust, and support over the last 15 years.

ANNOUNCEMENTS

**KENNEY & SAMS IS PLEASED TO ANNOUNCE
FOUR ATTORNEYS PROMOTED TO PARTNER**



**MICHELLE
DE OLIVEIRA**



**ANTHONY
FIORAVANTI**



**LAURA
RAISTY**



**ALEXANDER
ZWILLINGER**

Eleven Kenney & Sams attorneys included in the
2021 Super Lawyers and Rising Stars list.
CONGRATULATIONS TO OUR HONOREES!



J. Nathan Cole



Daniel Conroy



Michelle De Oliveira



Chris Kenney



David Kerrigan



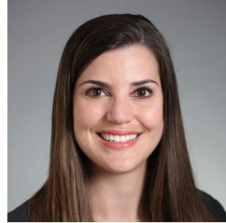
Laura Raisty



Mike Sams*



Ross Wecker



Julianne Fitzpatrick**



Emyr Remy**



Alexander Zwillinger**

* Named to 2021 Top 100 Lawyers In Massachusetts List

** Named to the 2021 Massachusetts Rising Stars List



**K&S Welcomes Matthew Welnicki,
Michael Dickman & Ryan Ward**



The firm is pleased to welcome Matt Welnicki, Mike Dickman & Ryan Ward.

Matt is a litigation partner who focuses his practice on tort defense, construction law, environmental law, and general civil litigation. He has extensive courtroom experience and has also litigated cases before administrative agencies and arbitration panels. Matt has a growing practice representing clientele ranging from large corporations and government agencies to start-up companies, small businesses, and individuals.



Mike is a litigator who resolves business, construction, and insurance coverage disputes. An integral part of the firm's trial team, Mike's experience spans disputes related to toxic tort, insurance defense, personal injury as well as products, premises and professional liabilities.



Ryan is an associate who supports the firm's partners in matters related to construction, employment, and general business. Driven to uncover the best possible legal strategies for clients, Ryan conducts factual research related to contracts, employment agreements, and business disputes.

K&S is pleased to welcome Matt, Mike & Ryan to our growing group of outstanding professionals.

CONGRATULATIONS EMYR REMY & MICHAEL DICKMAN



Congratulations to Emyr Remy and Mike Dickman who have been selected as part of the 2021 class of the Massachusetts Bar Association's Leadership Academy. Individuals chosen for the MBA Leadership Academy must commit to active

participation in all MBA Leadership Academy activities. After successful completion of the academy's curriculum of educational programming and mentoring, MBA Leadership Academy graduates will be better prepared to assume leadership roles at the bar, in their firms or organizations, and in government.

CLIENT VICTORIES

Nate Cole and Alex Zwillinger recently secured a victory for a national real estate broker by convincing a Suffolk Superior Court to dismiss all claims against the client and its agent. The plaintiff alleged that she could hear construction noise and see jobsite lights from the windows of the luxury unit she rented through the client in a downtown high rise. The court agreed with Nate and Alex and dismissed the lawsuit, finding that the client had "no common law or statutory duty to 'disclose' off-site construction work or the possibility that the city of Boston can be noisy or brightly lit." The dismissal helped the client avoid costly litigation by securing an early win.



Chris Kenney recently achieved victory for our client, 307 Trapelo LLC, at the Massachusetts Appeals Court. The appeal was from a judgment Chris previously won at trial in a complex commercial real estate dispute. The jury had awarded sole ownership of a multi million dollar commercial real estate portfolio and \$180,000.00 in monetary damages to our client after a two week trial in the Business Litigation Session. The Appeals Court affirmed all counts in our client's favor, including an award of treble damages and attorneys fees under the Massachusetts Consumer Protection Act.

ARTICLES OF INTEREST

Employers Should Prepare Now For Changes to Massachusetts Paid Family and Medical Leave, Effective January 1, 2022



By: [Julianne Fitzpatrick](#) & [Laura Raisty](#)

For many employers, the end of the calendar year is synonymous with getting their finances in order, from awarding year-end bonuses to setting budgets for the new year.

This year, employers must ensure that they are prepared to continue contributing the legally required percentages of eligible wages for Massachusetts Paid Family and Medical Leave (PFML), which will change in 2022, both from employee paychecks, and their own employer shares, depending on the employer's size.

[Read Full Article Here](#)



Key Considerations Concerning Contracts For The Sale Of Goods



By: **Emyr Remy**

Contracts governed by Massachusetts law are typically covered by one of two independent legal frameworks; the common law and the Massachusetts Uniform Commercial Code (the "UCC"). Contracts concerning the provision of services, real estate, and intangible assets are generally covered by the Commonwealths' common law of contracts whereas transactions for the sale of goods and other tangible assets are governed by the UCC at G.L. c. 106, Article 2 ("Article 2"). Whether a contract is governed by the common law or Article 2 carries important implications

and often requires a detailed analysis of the facts and circumstances surrounding the transaction in question.

[Read Full Article Here](#)

Massachusetts' Independent Contractor Test Does Not Apply When Determining Whether An Entity Is A Joint Employer, The FLSA Test Will Apply



By: **Michelle De Oliveira & Michael Dickman**

On December 13, 2021, the Supreme Judicial Court of Massachusetts ("SJC") issued a decision in *Jinks v. Credico (USA) LLC*, holding that Massachusetts courts must apply the Fair Labor Standards Act ("FLSA") test when deciding whether an entity is a joint employer—not Massachusetts' independent contractor test.

The plaintiff employees in the case were salespersons directly retained by DFW Consultants, Inc. ("DFW"). The defendant, Credico (USA) LLC, ("Credico") is a client broker for independent direct marketing companies. DFW subcontracted with



Credico to provide regional direct sales services for its national clients.

[Read Full Article Here](#)

FIRM HAPPENINGS

Hot Employment Issues



Laura M. Raisty



Michelle M. De Oliveira

Michelle and Laura have been hard at work ensuring our clients are kept informed of all the most recent and important updates regarding COVID19 and vaccine mandates for employers. Please see list of recent articles below for your reference. Click to read more.

- [Covid-19 Emergency Paid Sick Leave Extended Through April 1, 2022](#)
- [Guidance Issued for Federal Contractors on Vaccine Mandate and Requirements for Masking and Social Distancing](#)
- [OSHA Issues Emergency Temporary Standard Regarding COVID-19 Vaccination and Testing For Employers With 100+ Employees](#)
- [Two Days After OSHA's Issuance Of The Emergency Temporary Standard Regarding COVID-19 Vaccination And Testing For Employers With 100+ Employees, A Court Halts Enforcement](#)
- [Court Temporarily Halts Enforcement Of The Federal Contractor COVID-19 Vaccination Mandate](#)

Speaking Engagements

[Mike Sams](#) spoke on September 30th at the Boston Park Plaza Hotel to discuss escalating construction costs. Please see the below link for more information on this event sponsored by the [Massachusetts Building Congress](#). <https://bit.ly/3hV8M14>

[Laura Raisty](#) discussed Biden's vaccine mandate, the Delta variant and new considerations for employers on a panel sponsored by [Massachusetts Lawyers Weekly](#). Watch here: <https://bit.ly/2Wkbt4N>

Michelle De Oliveira co-chaired and spoke on a Massachusetts Bar Association webinar, entitled, Returning to the Office: Guidance from the Employment and Labor Law Perspectives. As part of this panel, Michelle discussed employment law perspectives on issues relating to the COVID-19 pandemic and employees returning to the office, including what employers can do and best practices. Watch here: <https://bit.ly/3Fag0sa>

Michelle De Oliveira was quoted in a Massachusetts Lawyers Weekly, “SJC asked to clarify test for joint employment,” which discusses the fact that the SJC will have an opportunity to clarify whether courts should be looking at the independent contractor statute, M.G.L. c. 149, § 148, to establish whether a Wage Act defendant is a plaintiff’s joint employer based on decision from the Massachusetts Superior Court in which the court applied the “right to control test” (not M.G.L. c. 149, § 148) to assess whether a defendant was a joint employer. Read here: <https://bit.ly/3ZLUP2>

On October 2th, Mike Sams and Laura Raisty discussed Understanding and Navigating HR Management Challenges in Today's Environment at an event hosted by CFMA. For more information, click here: <https://bit.ly/3Ah1D1j>

Mike Sams moderated Massachusetts Continuing Legal Education, Inc. (MCLE | New England)'s 4th Annual Richard S. Milstein Lecture entitled, Neal Katyal on The Supreme Court, the Duty of Candor, and Protecting Liberty in National Security Cases. MCLE is a mainstay in continuing legal education and we are proud to be part of this terrific program. Learn more here: <https://bit.ly/3mQLg6U>

Christopher A. Kenney presented a program with Judge Peter Lauriat (retired) at the annual meeting of the Defense Research Foundation (DRI) on Friday, October 15, 2021. The program focused on Protecting the Independence of the Judiciary.

Mike Sams participated in a webinar entitled, “BRAGB Business Practices Webinar - Contracts & Payment Risk” by Builders and Remodelers Association of Greater Boston on October 28th. Watch him discuss standard contract issues, payment issues, and the Home Improvement Contractor statute here: <https://bit.ly/2XG48gg>

On November 10th Mike Sams spoke at an Associated Builders and Contractors of Massachusetts Town Hall Forum where they discussed how OSHA's new Emergency Temporary Standard (ETS) will impact you and your employees, and what steps you will need to take to ensure that your company is in compliance. Watch here: <https://bit.ly/3F66Coi>

Laura Raisty discussed the OSHA Vaccination Mandate, including where the legal challenges stand, and what employers should be doing now to prepare in a Massachusetts Lawyers Weekly webinar. View here: <https://bit.ly/3FXu6wz>

On December 2nd, Nate Cole presented to the Massachusetts Defense Lawyers Association on the Home Improvement Contractor Statute, its interplay with c. 93A, and how the law impacts contractors and homeowners.

WEBINARS



**KENNEY
& SAMS**

KENNEY & SAMS

30 Minute Construction Risk Series Webinars

K&S continues to offer our clients substantive updates on key issues affecting the construction industry. Join us live at one of our upcoming webinars or if you missed any, you can view past webinars here: <https://kslegal.com/webinars/>

PREVIOUSLY RECORDED WEBINARS:

- **30 Minute Employment Law Series**
by Michelle De Oliveira & Laura Raisty
- **Mastering Mechanic's Lien Pitfalls & Opportunities**
by Anthony B. Fioravanti & Ross C. Wecker
- **Understanding Key Insurance Provisions**
by J. Nathan Cole & Christopher A. Kenney
- **Hot Employment Issues**
by Michelle De Oliveira & Laura Raisty

UPCOMING WEBINARS:

all webinars begin at 7:30am

January 20 - Mastering Claims Processes and No Damage for Delay Clauses

February 17 - Refining GMP Contracts Including Contingency Clauses

March 17 - Contract Termination Issues

**GET TO KNOW YOUR K&S TEAM MEMBER:
NATE COLE**



Best advice you were ever given as a professional:

Return phone calls. Justice Stephen Breyer was the commencement speaker when I graduated from B.C. Law. Justice Breyer encouraged the graduating class to get involved with bar associations, work for the government, and practice law with integrity. I took his advice to heart. I'm active in various bar organizations, worked as an attorney for the federal and state government, and practice with integrity and civility. But the part of his speech I remember most clearly was "return phone calls." Great, practical advice for lawyers and really anyone.

Favorite part about working for K&S:

I've been with K&S for over 5 years and love the team approach. We collaborate well with one another and our clients. It makes a demanding job a lot more fun because we are in it together.

Best non-legal job you've ever had:

I spent my summers from about the age of 14 until I graduated college working on whale watching and tour boats out of Plymouth, MA. At 19-years-old, I obtained my captain's license and was the captain of a tour boat out of Plymouth Harbor, and doubled as the commentator during the trips so if you're curious about the history of the Mayflower or Plymouth Rock, I'm your guy.

Something we may not know about you:

After law school I was an Attorney-Advisor for the U.S. Secretary of Commerce's Ethics Division. I was tasked with writing an extensive memo analyzing whether a government appointee could legally accept as a gift a cheese platter that was also a dartboard. It was at that point I realized I was better suited to be a litigator and moved from D.C. back to Boston where I clerked for the Massachusetts Superior Court before starting private practice.

Nate lives in Dover, MA, with his wife, Kristen, and their daughters, Grace and Amelia.

TIME TO REVIEW YOUR CONTRACTS?

Sophisticated companies understand the value of having their model contracts reviewed annually. The law evolves constantly, which means your contracts need to as well. If your model contracts contain outdated provisions that violate new laws, your company could suffer significant damages.

Annual reviews are one of the most cost-effective risk management tools you can employ. We perform these reviews efficiently.

Please reach out to us to ensure your model contracts achieve your goals and, correspondingly, do not expose your company to unnecessary damages.

HAPPY HOLIDAYS FROM KENNEY & SAMS



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