

TAKEN FOR A RIDE: MASSACHUSETTS SJC RULES THAT TAXI DRIVERS ARE INDEPENDENT CONTRACTORS

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In a decision that will have us watching whether there is a changing court view to a less strict reading of the “Independent Contractor Statute.” The Massachusetts Supreme Judicial Court (SJC) ruled on April 21, 2015 that Boston taxi drivers are independent contractors under the Wage Act. In doing so, the SJC had to interpret the facts in the context of the statute’s second prong, which requires that to be an independent contractor, the service must be performed “outside the usual course of the business of the employer.” See G.L. c. 149, §148B. Because most casual observers would assume that, in driving passengers around for fares, a taxi driver is performing the “usual course of business” of his taxi company employer, this holding came as a surprise.

The case is *Sebago, et al. v. Boston Cab Dispatch, Inc., et al.*. Plaintiffs were taxi drivers who leased taxis and medallions from the owners of those taxis and medallions at a flat rate. The defendants consisted of three groups: taxi and medallion owners; dispatch service companies, known as radio associations; and a taxi garage. Because these defendants classified the drivers as independent contractors rather than as employees, the drivers argued that they were entitled to relief under Massachusetts’s minimum wage and overtime laws.

In ruling for the Defendants, the Court reviewed the Massachusetts Independent Contractor Statute’s (c.149, §148B) three-prong test for determining whether someone is an independent contractor, rather than an employee (which is the presumption): (1) the drivers must be “free from control and direction in connection with the performance of the service,” both under the contracts and in fact; (2) the service being performed must be “outside the usual course of the business of the employer,” and (3) the drivers must be “customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.”

The SJC determined, without difficulty, that the drivers met the first (freedom from direction and control) and third (engaging in an independent trade or business) prongs. For the first prong, the SJC ruled that the drivers were mostly independent. They could choose which passengers to take on and which to refuse, and they could select their own shifts. In addition, most rules controlling the drivers’ behavior (including rules about the driver’s appearance, cell phone usage, meter rates, and more) came not from the taxi companies, but from the taxi regulations. The SJC also ruled that the drivers satisfied the third prong. They were permitted to lease from whomever they wanted, on any day they wanted. Also, they were not tied to specific medallion owners, and could advertise their services however they chose.

It is the ruling that the drivers met the second prong (performing services that are outside the usual course of the employer’s business) that, at first glance, departs from the traditional understanding of the independent contractor test. For instance, in *Schwann, et al. v. Fedex Ground Package System Inc.*, FedEx unsuccessfully argued that its drivers were not employees because it was in the logistics business, rather than the package delivery business. In rejecting FedEx’s position, the Court not surprisingly found that the FedEx drivers were at the heart of FedEx’s delivery business. Similarly, what is the taxi industry’s business but to provide rides in taxis? In finding the taxi drivers independent despite the apparent facts to the contrary, the SJC performed a

close analysis of the structure of the taxi industry to determine that, in fact, the drivers' services are, indeed, outside the usual course of the employer's business.

In 2008, the Boston Police Commissioner created the taxi system in accordance with a legislative mandate from 1930 that gives him authority to regulate the taxi industry. (St. 1930, c. 392, §1 ("police commissioner of the city of Boston shall have exclusive authority to make rules and orders for the regulation of hackney carriages and hackney stands.")) The system's regulatory framework under Boston Police Department Rule 403 creates three separate and distinct businesses: (1) the medallion owners lease taxis to drivers; (2) the radio associations dispatch the taxis; and (3) the drivers transport passengers in the taxis, for fares. Importantly, the SJC found that the medallion owners and dispatchers did not create this scheme in order to circumvent Massachusetts wage law.

Under this scheme, the SJC concluded that the medallion owners were not in the taxi ride business, but rather in the leasing business. That leasing business was not dependent on the success or failure of the driver's work. Instead, drivers pay a daily flat rate to lease the taxi and medallion, which remains constant regardless of the amount the driver earns each day. The drivers retain the entire fare, none of which goes to the medallion owners. Similarly, the SJC ruled that the dispatch companies were not in the business of giving taxi rides, but rather in the business of providing dispatch services to medallion owners.

The SJC also cited the regulations that govern the taxi industry, which recognize that drivers may be independent contractors or employees. Since this is the permitted scheme, the "employers" are free to plan for an arrangement that results in the drivers falling into the employee or independent contractor category, as they see fit.

Because this case is very specifically tied to the nuances and regulations of the byzantine Boston taxicab industry, its impact may be limited. We will be watching, however, to determine whether there is a shift in the way Massachusetts courts view the Independent Contractor Statute.