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To our valued clients:

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## Massachusetts Independent Contractor Law Amended

We thought you should be aware of a recent change to the Massachusetts Independent Contractor Law. During the last legislative session, the Legislature passed and Governor Romney signed into law a bill that amended the independent contractor law (M.G.L. chapter 149, Section 148B). In a nutshell, the change has eliminated the traditional twenty factors test for determining whether an individual is an independent contractor or an employee and reduced it to three rigid criteria. Under this approach many more workers will be excluded from independent contractor status than before.

The new Independent Contractor Law states that "an individual performing any service ... shall be considered to be an employee ... unless:

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 of business of the same nature as that involved in the service performed. "

Unless all three of the criteria are met the worker is deemed an employee for purposes of Massachusetts' **worker's compensation** and wage laws.

The new law creates a presumption of an employer-employee relationship that is very difficult to overcome. Under one interpretation of criteria 2. for example, a drywall contractor could not have any individual drywall subcontractors. Since the work of the subcontractors is the same as the business of the contractor employer the subcontractors would all be considered employees. It would not matter even if the subs were sole proprietors and purchased their own Workers' Compensation insurance. Such factors cannot be considered in determining whether a worker has been appropriately classified as an employee or independent contractor.

In talking to one attorney, he agrees that this law applies primarily to individuals and partnerships and, for example, should not affect your relationship with incorporated subcontractor who properly withhold payroll taxes from and purchases Worker's Compensation coverage for its workers.

A company that fails to properly classify an individual as an employee in accordance with the Independent Contractor Law shall be subject to substantial civil and criminal penalties, as well as debarment from public works. The Independent Contractor Law creates broad liability for both business entities and individuals, including corporate officers and those with management responsibility over affected workers.

The Attorney General (AG), who is authorized and responsible for enforcing the Independent Contractor Law, has issued an advisory on the new changes to the law as a guide for employers to follow. The advisory suggests that Massachusetts employers will need to reexamine many of their work relationships to ensure that they are complying with the law. We strongly suggest that all employers meet with their lawyers and accountants in order to review their work arrangements with their subcontractors to make sure that all of their employees are properly classified.

The complete text of the AG's advisory is available on the Attorney General's website at:  
<http://www.ago.state.ma.us/sp.cfm?pageid=1001>.

The complete text of the law can be found at: <http://www.mass.gov/legis/laws/mgl/149-148b.htm>.

Very truly yours,

DeSanctis Insurance Agency, Inc.