

October 10, 2023

Representative Josh Cutler, Chair  
Joint Committee on Labor and Workforce  
Development  
State House, Room 472  
Boston, MA 02133

Senator Patricia Jehlen, Chair  
Joint Committee on Labor and Workforce  
Development  
State House, Room 424  
Boston, MA 02133

Dear Chair Cutler and Chair Jehlen,

On behalf of the Greater Boston Chamber of Commerce and our 1,200 members, I write to offer comments regarding H.1902, *An Act relative to independent contractors*, and H.1904, *An Act relative to the definition of an independent contractor*. The business community has long lobbied for legislators to adjust the state's independent contractor law and the need is as great as ever. Massachusetts's rigid independent contractor law stifles job options for both workers and employers in a changing and modernizing economy. Legislators should reconsider this restrictive statute as an essential element in maintaining the Commonwealth's competitiveness while also ensuring adequate protections for workers.

Section 148B of Chapter 149 of the General Laws creates a 3-part test for determining when a person providing services for pay is classified as an independent contractor. While the statute aims to prevent worker misclassification, in effect it prohibits the use of independent contractors in almost all instances across all industries.

Given the state's stringent standard, businesses in Massachusetts cannot hire independent contractors to manage workloads for existing employees or respond to variable customer demands because the service would not be outside their usual course of business. The standard places Massachusetts-based businesses at a disadvantage compared to competitors in other states. For entrepreneurs, this standard can also be a barrier to entry.

The current law penalizes the workforce, too. A recent report as part of McKinsey's American Opportunity Survey indicated that 36% of respondents identified as independent workers, which would represent 58 million Americans from the representative sample.<sup>1</sup> This demonstrates that a noteworthy share of today's workforce is choosing independence over the structure of traditional employment. This law limits such independent work arrangements for people seeking flexible work, including stay-at-home parents looking to reenter the workforce, young professionals and students looking to gain broad experience, and older workers who want to scale back on their hours.

Furthermore, the state's current law does not reflect a changing economy, as evidenced by the ongoing, complicated lawsuits regarding the worker classification system. "Gig work" is firmly established as a part of our economy, and current laws were drafted before such work existed at substantial levels. The result is that there are grey areas in the law that both employers and workers struggle to navigate.

Of course, worker protections have long been a priority in the Commonwealth. However, these protections are not mutually exclusive to additional workplace flexibility – especially when workers want more independence and control over a job. Particularly important as many workers and businesses continue to reevaluate the nature of work in a post-pandemic world, an outcome that stunts career and economic growth warrants a reevaluation.

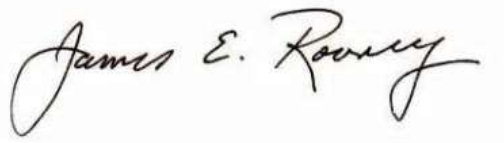
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<sup>1</sup> <https://www.mckinsey.com/featured-insights/sustainable-inclusive-growth/future-of-america/freelance-side-hustles-and-gigs-many-more-americans-have-become-independent-workers>

I encourage the committee to issue a favorable report for these bills, or in the alternative, consider other legislative options that will improve the clarity and flexibility of our independent contractor law in collaboration with the employer community.

I appreciate the Legislature's continuing commitment to work with the business community on public policy issues that will support a strong, dynamic economy. Please reach out if you have any questions or would like to further discuss this important issue.

Sincerely,

A handwritten signature in black ink that reads "James E. Rooney". The signature is written in a cursive style with a large, looping initial "J".

James E. Rooney  
President and CEO

CC: Members of the Joint Committee on Labor and Workforce Development