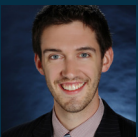


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The Test for Independent Contractors and Unemployment Taxes Made Friendlier

A deeply divided Connecticut Supreme Court recently issued a long-awaited decision, *Standard Oil v. Administrator*, regarding who is an independent contractor. The reason this is significant is that companies that utilize the services of independent contractors are not responsible for, among other taxes, unemployment compensation contributions. The Board of Review of the Employment Security Appeals Division has long interpreted the statute liberally and in this case concluded that the first two prongs of the “ABC” test required that the workers be treated as employees. The Connecticut Supreme Court overturned that ruling, finding that the workers were indeed independent contractors.

The ABC test requires a company seeking an exemption from the tax to meet all aspects of the statute. Part A focuses on the company’s direction and control over the workers. Part B looks at whether the work was performed at the company’s place of business or whether the work performed is integral to the company’s business. Part C, which was not at issue in the case, is focused on whether during and after providing services to the company, the independent contractor held himself out as offering the same services to others and has continued in the business of providing the same services.

Installers/technicians performed installation and repair work on oil furnaces and security systems that were sold by Standard Oil. Standard Oil treated them as independent contractors. The Connecticut Supreme Court found that the installers/technicians owned their own tools and vehicles, were licensed and certified, and were not supervised at their worksites by a representative of Standard Oil. The work of the installers/technicians was not inspected by the company, either during or after the work. The installers/inspectors were allowed to hire their own assistants. The installers/technicians were free to accept or reject any assignment without adverse consequences and determined when they were available to work, but once they accepted an assignment, they had to perform the work within the time frame set by the customer and the company. The installers/technicians performed the same work as part of their own businesses. The company provided no employee benefits. The installers/technicians were not required to be trained by the company nor were they required to display the company’s logo on their clothing or vehicles. They were not paid by the hour. Each signed an independent contractor agreement. Based on these factors the Court concluded that the company satisfied the exemption under Part A.

There was a significant dispute between the majority and minority opinions on whether Part B was satisfied. The focus of the dispute and the critical factor was whether the work was performed at the company’s “place of business.” This was a matter of statutory



interpretation that involved analyzing the plain words, examining the language in the context of the broader statute, and reviewing the legislative history and case law from other states. The majority's ultimate conclusion was that "the meaning of 'places of business' in the present context should not be extended to the homes in which the installers/technicians worked, unaccompanied by the [company's] employees and without . . . supervision." Thus, the company satisfied the criteria for the exemption under Part B.

This decision is welcome news for companies which use independent contractors. But while there is euphoria in the ultimate decision, it is important to realize that Part C was not at issue in the case, but may be for other companies who use independent contractors. Additionally, the Department of Labor may seek to have the statute amended to reverse this decision and to compel companies to pay into the unemployment compensation trust fund. For companies who use independent contractors it is critical to obtain and follow legal advice to make sure such relationships can hold up under scrutiny of the ABC test, while also recognizing that federal agencies use other criteria in determining whether the worker is an employee or independent contractor.

Questions or Assistance:

If you have questions regarding this ruling, please contact Gary Starr at gstarr@goodwin.com or (860) 251-5501 or Christopher Engler at (860) 251-5143 or cengler@goodwin.com.

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