

OREGON LAW UPDATE

Contractors Are “Workers,” for Workers Compensation Purposes, If Employer Has “Direction and Control”

From the Desk of Jeff Eberhard: In this case the Oregon Court of Appeals outlined the test used to determine if contractors are “workers” for the purposes of Oregon’s workers compensation rules.

Claims Pointer: An employer who contracts work to individuals will still need to pay workers compensation premiums if those employees qualify as “subject workers.” Contractors are subject workers if they are under the direction and control of an employer. Employers should know that Oregon courts are willing to categorize individuals as workers if they satisfy even two of the four factors used in the applicable test.

case in point ...

RJ Enterprises LLC of Or. v. DCBS, in the Court of Appeals of the State of Oregon, A143127 (March 8, 2013).

RJ Enterprises (“RJ”) operated a frozen meat distribution company that uses truck drivers to deliver its products. The relationship between RJ and the drivers was governed by an independent contractor agreement (“ICA”) which contained assorted provisions regarding meat quality, consumer relations, truck maintenance, and liability. Drivers made their own schedules and chose their own delivery routes. The drivers leased refrigerated trucks from RJ and were paid the amount of their sales, less the cost of the lease and the products.

In 2007 and 2008, RJ’s workers compensation insurer, SAIF, conducted audits of RJ’s payroll. SAIF determined that, for purposes of workers compensation premiums, the drivers were subject workers. RJ challenged the assessments before an Administrative Law Judge (“ALJ”). The ALJ concluded that the drivers were, in fact, workers for whom RJ had to provide workers compensation coverage. RJ appealed the decision of the ALJ.

On review, the Oregon Court of Appeals applied a two-part test to determine if RJ had “direction and control” over the drivers and, therefore, they qualified as “workers.” The first test, the “right to control” test, applies four factors. Two factors indicated that RJ had a right to control the drivers, and thus, they were workers. First, there was direct evidence that RJ had such a right. RJ controlled what the drivers could sell, how they had to behave on the road, and how the vehicles should be operated. Second, RJ

furnished tools and equipment to the drivers, further supporting the case for including them as workers. The other two factors considered by the court, the method by which the drivers were paid and RJ’s right to fire the drivers, were found to be neutral in determining whether the drivers were workers.

The second test, the “nature of the work” test asks whether the drivers agreed to provide services for remuneration. In order to answer that question, the Court looked at two factors. First, whether the drivers’ role was part of their own business, or part of RJ’s business. The Court found that the drivers provided only their services, while RJ provided everything else. Accordingly, the drivers’ business was actually part of RJ’s business. Second, the Court looked at the relationship between the drivers’ work and RJ’s business. The Court agreed with the ALJ that the drivers’ services were a regular part of the cost of RJ’s products. The drivers’ services were continuous, and they provided RJ with 95 percent of its revenue. These two factors indicated that the drivers were workers under the “nature of the work” component of the two-part test.

The presence to two supporting factors in the “direction and control” test and the satisfaction of the “nature of the work” test led the Court to affirm the ALJ’s determination that the drivers were, in fact, workers, for the purposes of workers compensation claims.



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