Misclassification of Workers: Oregon's Approach

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Definition of Misclassified Worker

- Any worker that should be classified as an employee by an employer, but is not.

Problems Caused by Misclassification of Workers:

- The worker may lose lawful benefits.
- Misclassified workers are not eligible for worker coverage provided to employees under Oregon's laws.
  - No withholding of income taxes.
  - No Unemployment Insurance benefits.
  - No Workers Compensation Insurance for injuries.
  - No wage and hour rights like overtime pay and regulated working conditions.
  - No health insurance, pension plans etc.

Not Just Independent Contractor

- Misclassification of workers comes in several different forms:
  - Independent contractor – most common.
  - Franchise.
  - Referral service.
  - Misuse of legitimate statutory exclusions.
  - Misclassification of payments.
  - Misuse of legal entities.

Legislative History

- Until 1990, Oregon administrative agencies had separate definitions of independent contractor.
- Under a law change effective 1990, several agencies share a common definition of independent contractor.
- In 2006 The Legislature modified the common definition somewhat and mandated continued cooperation between the agencies.
- In 2009, the Legislature passed House Bill 2815 which created the Interagency Compliance Network.

Past Activities

- In 2003, the Independent Contractor task force began meeting. Its charge was to reach consensus on changes needed to definition of independent contractor.

- In 2006, at the task force's suggestion, state agencies created a website for independent contractor issues at:

www.oregonindependentcontractors.com

Current Initiative
HB 2815

- House Bill 2815 – 2009 legislation.
  - Formalizes Interagency Compliance Network.
  - Establishes 8 goals for the network.
  - Removes confidentiality barriers for network agencies.

Agencies Involved

- Employment Department
- Department of Revenue
- Department of Consumer & Business Services
- Bureau of Labor & Industries
- Construction Contractors Board
- Landscape Contractors Board
- Department of Justice
- Other agencies may be added later, as needed.

More Information?

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Appendix

Oregon Revised Statute (ORS) 670.600

ORS 670.600 Independent contractor defined.

(1) As used in this section:

(a) "Individual" means a natural person.

(b) "Person" has the meaning given that term in ORS 174.100.

(c) "Services" means labor or services.

(2) As used in ORS chapters 316, 656, 657, 671 and 701, "independent contractor" means a person who provides services for remuneration and who, in the provision of the services:

(a) Is free from direction and control over the means and manner of providing the services, subject only to the right of the person for whom the services are provided to specify the desired results;

(b) Except as provided in subsection (4) of this section, is customarily engaged in an independently established business;

(c) Is licensed under ORS chapter 671 or 701 if the person provides services for which a license is required under ORS chapter 671 or 701; and

(d) Is responsible for obtaining other licenses or certificates necessary to provide the services.

ORS 670.600 Continued

(3) For purposes of subsection (2)(b) of this section, a person is considered to be customarily engaged in an independently established business if any three of the following requirements are met:

(a) The person maintains a business location:

(A) That is separate from the business or work location of the person for whom the services are provided; or

(B) That is in a portion of the person's residence and that portion is used primarily for the business.

(b) The person bears the risk of loss related to the business or the provision of services as shown by factors such as:

(A) The person enters into fixed-price contracts;

(B) The person is required to correct defective work;

(C) The person warrants the services provided; or

(D) The person negotiates indemnification agreements or purchases liability insurance, performance bonds or errors and omissions insurance.

ORS 670.600 Continued

(c) The person provides contracted services for two or more different persons within a 12-month period, or the person routinely engages in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.

(d) The person makes a significant investment in the business, through means such as:

(A) Purchasing tools or equipment necessary to provide the services;

(B) Paying for the premises or facilities where the services are provided; or

(C) Paying for licenses, certificates or specialized training required to provide the services.

(e) The person has the authority to hire other persons to provide or to assist in providing the services and has the authority to fire those persons.

ORS 670.600 Continued

(4) Subsection (2)(b) of this section does not apply if the person files a Schedule F as part of an income tax return and the person provides farm labor or farm services that are reportable on Schedule C of an income tax return.

(5) For purposes of determining whether an individual provides services as an independent contractor:

(a) The creation or use of a business entity, such as a corporation or a limited liability company, by an individual for the purpose of providing services does not, by itself, establish that the individual provides services as an independent contractor.

(b) When the individual provides services through a business entity, such as a corporation or a limited liability company, the provisions in subsection (2), (3) or (4) of this section may be satisfied by the individual or the business entity.