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Interagency Compliance Network Report To the Oregon Legislature

**Bureau of Labor and Industries
Construction Contractors Board
Department of Consumer and Business Services
Department of Justice
Department of Revenue
Employment Department
Landscape Contractors Board**

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www.oregonindependentcontractors.com

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Executive Summary

In 2009, with House Bill (HB) 2815, the legislature created the Interagency Compliance Network (ICN) to improve employers' and workers' compliance with Oregon's tax and employment laws. The ICN is comprised of seven state agencies that share information, collaborate on enforcement, and conduct educational outreach in accordance with Oregon Revised Statutes (ORS) 670.700. Every two years, the ICN is required to report on its activities, funding, and revenue impact. This report outlines events from calendar years 2017 and 2018.

Each ICN agency shares some nexus with issues around worker classification, under-the-table cash payments to workers, or related workplace and tax issues. The ICN creates a framework for these agencies to collaborate where their existing programs and activities relate to each other. Creation of the ICN did not change agencies' existing duties and responsibilities, nor did it provide additional statutory enforcement tools for each agency; instead, it fostered information sharing and collaboration among the agencies to further their common interests.

The ICN operates through a steering committee of leadership from each statutory agency that meets quarterly, and an Enforcement and Communications Group that meets monthly to collaborate on enforcement activities and share leads regarding non-compliant entities as well as coordinate outreach events, website updates, and data collection for ICN reports.

Since the last ICN report, many industries have gone through significant changes, including the expansion of the recreational marijuana industry in Oregon which covers production, processing, wholesaling, and retail sales of marijuana items. Additionally, there is the rise of "gig" industries and challenges with identifying "gig" workers. Both industries have had a significant impact on ICN agencies and worker classification. ICN agencies must deal with the challenges of "gig" employers operating in multiple states and located out of state, and the largely cash-based marijuana industry resulting from federal banking regulations. These changes to the way business is conducted in Oregon are external factors that have influenced the ways the ICN works to educate the public and enforce compliance with tax and employment laws.

Participating ICN Agencies

The minimum statutory membership of the ICN includes the following seven state agencies:

- Oregon Employment Department (OED)
- Department of Revenue (DOR)
- Construction Contractors Board (CCB)
- Landscape Contractors Board (LCB)
- Bureau of Labor and Industries (BOLI)
- Department of Consumer and Business Services (DCBS)
- Department of Justice (DOJ)

The ICN can permit additional membership from other state agencies that have an interest in compliance with laws relating to taxation or employment by entering into an intergovernmental agreement with the ICN agencies. Coordination under the ICN extends beyond information sharing to include joint audits, uniform investigative and classification methodology, coordinated outreach, and policy development.

The work of the ICN, as well as the underlying classification and worker problems the coordination seeks to address, impacts program administration in these agencies in different ways.

For the Oregon Employment Department, when workers are not properly classified, it means their wages have not been correctly reported and the employer has not paid all required unemployment insurance taxes. This can delay payment of benefits to claimants because there is no record of their earnings. It can also mean that because an employer has not paid all of its required taxes, the cost of paying benefits to its workers becomes socialized across those employers who do pay their taxes, ultimately leading to a heavier unemployment insurance tax burden for those employers who are in compliance. Data collected by the Unemployment Insurance Tax program is used by other agencies and partners for decision making and program effectiveness measuring. When workers are misreported, the quality of the data that others rely on is degraded.

For the Department of Revenue, when workers are not properly classified, it means their wages have not been correctly reported and that the employer has not withheld payroll taxes, including the statewide transit tax, or paid applicable transit district payroll taxes. When companies misclassify workers, the Department of Revenue does not receive the quarterly withholding tax payments due under Oregon law, and instead is reliant on the misclassified individual filing a personal income tax return and making the required tax payments at the end of the year. Individual workers who are misclassified may also mistakenly expense items which would not be allowed under proper classification. Under-the-table wages not reported on personal income tax returns directly results in lost withholding, statewide transit, and TriMet or Lane transit tax.

In the interest of protecting property owners, the Construction Contractors Board and the Landscape Contractors Board both conduct a field enforcement program to ensure that contractors properly classify their workers. Enforcement information is shared with the other ICN members. The agencies address worker classification, employment tax and workers compensation requirements in their pre-license and continuing education curricula for licensees. Both agencies disseminate information to the public regarding licensing requirements and how to verify the status of contractor licenses.

For the Bureau of Labor and Industries, misclassification may result in workers being denied the protections available to them under the state's wage and hour regulations. By misclassifying its employees as independent contractors, an employer may fail to: meet its obligations to pay employees minimum wages and overtime; provide employees with rest and meal periods; permit employees to accrue and use sick time; and maintain adequate records of hours worked and wages earned. The informal nature of payments by cash tends to promote disputes concerning hours worked and wages paid, and results in inadequate recordkeeping on the part of employers.

Participation in the ICN has increased the Department of Consumer and Business Services Workers' Compensation Division's ability to share information with, and receive information from, ICN partner agencies. The leads received from other agencies, along with participation in the compliance "sweeps," are additional tools that the Department of Consumer and Business Services uses to ensure that employers are complying with workers' compensation insurance coverage requirements. Identifying employers that are attempting to gain an unfair business advantage by not purchasing required insurance helps to level the economic playing field for all employers in Oregon. Ensuring that subject employers have workers' compensation insurance means that workers who are injured on the job receive timely benefits. It also reduces the costs of claims that must be paid from public funds. The interaction with partner agencies also provides opportunities to discuss respective policies and approaches to employer compliance, and to collaborate on issues and challenges that may impact the work that the Department of Consumer and Business Services does.

The Department of Justice works to assist local, state, and federal law enforcement agencies in the investigation and suppression of organized crime, and to investigate the investment of funds in Oregon that have been generated by criminal activities. In light of those mandates, the Department of Justice's participation in the ICN is focused primarily on working with other members of the ICN to identify criminal misconduct by regulated entities and individuals.

The ICN has continued to focus on the following priorities over the past two years:

Outreach and Assistance;
Enforcement Activities;
Internal Development; and
External Factors

Outreach and Assistance

Sharing information, educating the public about how to comply with employment and tax laws, coordinating outreach events, and providing resources to the public has remained a primary focus of the ICN. Whether information is provided via in-person presentations, publications, or the state's independent contractor website, all ICN partner agencies have participated in educational outreach over the past two years. Worker classification issues can be complex and a primary goal of the ICN is to make it as easy as possible for everyone to understand the applicable laws and requirements.

Table 1 contains data regarding outreach in 2017 and 2018 by ICN agencies where the content involved the ICN:

Table 1

Agency	Total Number of Events Attended	Number of Collaborative Events (with other ICN agencies)
CCB	129	3
DCBS	10	10
DOR	156	12
OED	15	11

ICN Website – The state's independent contractor website (www.oregon.gov/IC) features resources such as industry-specific examples of employee versus independent contractor scenarios, video presentations, outside resources for businesses, and literature repositories. There were nearly 30,000 hits on the website during 2017 and 2018. Other ICN agencies have links to the site, and the site is promoted during outreach activities by ICN agencies. Due to the increased presence of "gig economy" businesses in the state, information was added to the independent contractor website in late 2018 that outlined specific examples of employee versus independent contractor in this industry.

The ICN website contains informational brochures in English, Spanish, Russian, Vietnamese, and Korean. The site provides contact information and links for each of the statutory ICN agencies, directing businesses to agency-specific information related to employment and tax issues.

Educational Outreach Presentations – Educational outreach has been significant over the past two years and ICN agencies have attended more than 300 outreach events covering different issues throughout the state. Although each agency retains its own outreach practices, collaborative efforts have increased among ICN agencies, with the Department of Revenue and the Oregon Employment Department partnering on dozens of presentations and attending conference events together. The Construction Contractors Board's continuing education program has involved other ICN agencies presenting information to businesses on many occasions. Whenever in-person collaboration is not possible, materials from agencies unable to

attend are provided for distribution. This practice has led to stronger relationships between the agencies and better customer service to those seeking information.

The effectiveness of ICN collaboration has caused additional collaboration beyond ICN agencies, including the Secretary of State's office, the Oregon Health Authority and units not traditionally part of the ICN such as the Office of Administrative Hearings, and the Oregon Health Insurance Marketplace administered by Department of Consumer and Business Services. These other agencies and business units frequently share outreach opportunities and invite ICN agencies to specialized events based on perceived audience interest in ICN materials.

Close to 3,000 construction contractors have viewed an hour-long training video on "Paying Under the Table" since it was posted online in spring 2016. The Construction Contractors Board holds in-person continuing education classes on construction contractor regulatory requirements. The Construction Contractors Board recruits guest speakers from other state agencies on topics related to who is an independent contractor as well as who is required to have workers' compensation insurance. The Construction Contractors Board and Landscape Contractors Board also staff tables and speak at trade association gatherings throughout the year, as do the Oregon Employment Department, the Department of Revenue, the Department of Consumer and Business Services, and the Bureau of Labor and Industries.

U.S. Department of Labor – The Oregon Employment Department is currently working with the U.S. Department of Labor to develop a webinar for states to use to address misclassified worker issues. Oregon was asked to contribute because of the promising practices and outcomes exhibited by the ICN. The U.S. Department of Labor believes that it would be a "best practice" for all states to have similar tools available to them to enhance their regulatory efforts related to misclassification issues.

Enforcement Activities

Compliance with employment and tax laws is the reason the ICN was established. Education about what is required leads many businesses into compliance. For others, it is not a matter of understanding the requirements, but instead a challenge for ICN agencies to identify people, businesses and industries that may be intentionally trying to circumvent their requirements under Oregon law. To ensure that outreach and educational efforts are successful, each ICN agency conducts some form of compliance activity or enforcement on businesses subject to employment and tax laws. Whenever possible, ICN compliance specialists are mindful of situations where other ICN agencies would be interested in participating with compliance checks to ensure efficient enforcement activity.

Enforcement and Communications Group Activities – To coordinate enforcement processes, ICN agencies have developed an ICN Enforcement and Communications Group that meets on a monthly basis. The focus of the group is to share information about non-compliant entities, offer assistance with audits, share success stories, and discuss newly identified methods used by non-compliant entities to avoid legal responsibilities.

- ❖ **ICN Audits** – Department of Revenue and the Oregon Employment Department each conduct compliance audits on behalf of other ICN agencies. Both agencies have auditors that conduct joint audits covering the programs administered by the agencies including preparing tax assessments resulting from the audit.

To benefit the work of the individual agencies, and as a convenience to employers, the Oregon Employment Department and Department of Revenue coordinate to perform joint ICN audits. In 2017, Department of Revenue and the Oregon Employment Department joint ICN audits included reported payroll of approximately \$17.96M. Auditors discovered an additional \$15.89M in unreported payroll during the course of these audits, as well as identifying 539 misclassified workers.

In 2018, the Department of Revenue and the Oregon Employment Department joint ICN audits included \$31.9M of reported payroll. Auditors discovered an additional \$77.69M in unreported payroll during the course of these audits, as well as identifying 6,986 misclassified workers. These audits resulted in additional assessments of \$448,610 in Unemployment Insurance tax in 2017 and \$1,944,921 in Unemployment Insurance tax in 2018. In sum, for the previous two years Department of Revenue and the Oregon Employment Department have concluded 20 joint ICN audits resulting in additional assessments of \$2.39M in Unemployment Insurance tax and the reclassification of 7,525 employees.

Table 2 describes the results of the joint audits:

Table 2

Unemployment Insurance and Payroll Audits			
ICN Audit Results (Calendar Year)	2017 6 Audits	2018 14 Audits	Total Audits
Total payroll audited	\$17,959,996	\$31,906,750	\$49,866,746
Total unreported payroll discovered in audits	\$15,893,494	\$73,057,510.42	\$88,951,004.42
Total number of misclassified workers identified	539	6,986	7,525
Total Unemployment Insurance Tax assessed through audits	\$448,610	\$1,821,070.77	\$2,269,680.77

In addition to these joint audits, ICN agencies also refer matters to each other. In 2017 and 2018, the Bureau of Labor and Industries referred 30 cases to ICN partner agencies and participated in enforcement activities with other agencies twice.

- ❖ **Compliance Audits and Investigations** –Each agency conducts compliance audits and may share results with other agencies during the audit or after the fact to bring non-compliance issues identified during the normal course of business to the attention of other ICN agencies. While the varying ICN agencies are tasked with differing core responsibilities, sharing the information gleaned from these audits is vital to other ICN agencies when identifying non-compliant entities. Agencies sometimes conduct

combined activities, with compliance staff from multiple agencies going on enforcement sweeps or conducting audits. The Oregon Employment Department shares all audit information where a change is made to an employer's quarterly payroll report with the Department of Revenue on a quarterly basis.

The Oregon Employment Department and Department of Revenue conduct regular compliance audits in order to provide information to businesses and ensure that employers understand and follow the law regarding taxation and employment. While these audits are not always conducted jointly with other agencies, the Oregon Employment Department and the Department of Revenue share audit results with each other any time that a change is made to the information originally provided by the employer.

The Oregon Employment Department completed 1,338 audits in 2017, reviewing \$730,703,713 in payroll. Those audits resulted in the discovery of an additional \$33,227,657 in unreported payroll and identification of 3,668 misclassified workers. In 2018, the Oregon Employment Department completed 1,433 audits, reviewing \$780,059,955 in payroll. Those 2018 audits resulted in the discovery of an additional \$27,533,624 in unreported payroll and identification of 3,429 misclassified workers. As a result of these audits, the Oregon Employment Department assessed an additional \$757,102 in Unemployment Insurance Tax in 2017 and \$598,274 in 2018.

While the Department of Revenue's new core system (GenTax) has automated much of the non-filing identification and notice processes, the Department of Revenue continues to maintain an audit presence to fulfill the aims of the ICN. In 2017, 1,984 the Department of Revenue investigations identified \$28,631,677 in underreported payroll and led to additional payments of \$2,084,307.94. In 2018, 2,175 investigations identified \$58,285,541 in underreported payroll and additional payments of \$4,228,193.27.

This automation led to the Department of Revenue identifying nearly 150,000 businesses subject to the new Oregon Statewide Transit Tax prior to the withholding requirement beginning July 1, 2018, allowing the Department of Revenue to issue direct mailing notices to employers and exceed the expected filing rates projected for the first quarter of the new program.

The Department of Consumer and Business Services, Workers' Compensation Division conducts investigations of workers' compensation insurance coverage violations, which may result in penalties being assessed against non-compliant employers. During the course of the investigation, if misclassification of workers or unreported payroll is identified, the Department of Consumer and Business Services shares those findings with the Oregon Employment Department and the Department of Revenue. If, during the course of an investigation, the Department of Consumer and Business Services identifies Construction Contractors Board and/or Landscape Contractors Board violations (specifically contractors with employees and no active workers' compensation insurance), those findings are shared with the respective agency(s).

Table 3 describes the Department of Consumer and Business Services Workers' Compensation Division investigations:

Table 3

Department of Consumer and Business Services Workers' Compensation Division Investigations	2017 14,342 Investigations	2018 14,006 Investigations	Total 28,348 Investigations
Non-Claim Investigations	13,646	13,203	26,849
Claim Investigations	696	803	1,499
Orders Issued	558	452	1,010
Penalty Assessments	\$7,092,671	\$8,238,285	\$15,330,956

The Bureau of Labor and Industries conducts investigations into wage claims and complaints from workers and others, which may result in determinations of unpaid wages and civil penalties against non-compliant employers. During the period covered by this report, the Bureau of Labor and Industries investigated 38 cases involving possible misclassification of employees as independent contractors, unpaid interns, or volunteers. Unpaid wages owed to workers and civil penalties assessed in these cases totaled \$105,247.43. In these cases, the Bureau of Labor and Industries was able to facilitate the restitution of \$32,512.62 in unpaid wages for Oregon workers, including amounts paid to workers from the state's Wage Security Fund (where unpaid wages are owed by employers who are no longer in business and without available assets to pay wages).

Detection Efforts – Agencies in the ICN continue to work together to identify methods of detecting those businesses and individuals operating outside of the law.

- ❖ **Sweeps** – ICN enforcement activities include the use of “sweeps,” where ICN agencies travel to regions of the state together and conduct a coordinated investigation of a worksite to ensure that all compliance issues involving licensing, workers, safety, and payroll are being addressed. These sweeps have proven to be successful beyond the particular investigation as they provide public awareness of compliance requirements being investigated.

Construction Contractors Board coordinates many sweeps, inviting other agencies to participate. In calendar years 2017 and 2018, the Construction Contractors Board conducted nine enforcement sweeps. During these sweeps, the Construction Contractors Board concentrates its field investigators in a particular region of the state to root out unlicensed contractors and other violations of construction contracting law.

The Construction Contractors Board has 10 field investigators who typically work in one of seven assigned regions. During sweeps, the agency assigns multiple investigators to a region. These concentrated enforcement actions resulted in:

- More than 1,898 job-site checks.
- More than 418 suspected violations.
- Interagency cooperation – Department of Revenue and the Department of Consumer and Business Services each participated in five of the sweeps and the Bureau of Labor and Industries participated in two. Also, the Construction Contractors Board verified electrician and plumber licenses on job sites as part of an agreement with the Department of Consumer and Business Services' Building Codes Division.
- The Department of Revenue conducted two independent sweeps and one joint sweep with the Construction Contractors Board. In total, 380 job sites were visited in which 553 businesses were checked for compliance. Of the 850 employees interviewed, 42 were found to be misclassified.

Violations found during sweeps generally tend to be in three key areas:

- Working as a contractor without a license.
- Having employees but lacking workers' compensation insurance.
- Failure to have a Construction Contractors Board lead-safe license to work on homes built prior to 1978.

The Landscape Contractors Board investigators performed more than 400 job-site checks throughout the state in calendar years 2017 and 2018. Resulting potential enforcements were referred to other agencies as warranted, primarily the Construction Contractors Board and the Department of Consumer and Business Services.

- ❖ **Cash Payments** – In order to reach and dissuade businesses that pay cash to employees “under the table,” the Construction Contractors Board has taken charge of outreach in this area by developing an educational video as part of its continuing education requirements for construction contractors. The Construction Contractors Board invited several other ICN agencies to participate in script development, messaging, and participation in the video in order to ensure that each agency impacted by improper cash payments has a chance to communicate with viewers. The audience for this video is general construction contractors, but the message is appropriate for any business that pays cash to employees. Since the video launched on February 26, 2016, it has been viewed approximately 3,000 times.

Department of Justice, the Oregon Employment Department and the Department of Revenue have been working closely together to identify businesses that deliberately circumvent state laws and employ methods to avoid detection by ICN agencies, such as paying employees “under the table” in cash. Our efforts in 2018 have focused on identifying conduct by businesses that is suitable for a criminal investigation and possible prosecution.

ICN agencies have directed significant focus to identify noncompliance in the marijuana industry during 2017 and 2018. Prior to legalization of marijuana, this industry existed

entirely in the black market and ICN agencies have staff dedicated to working with marijuana industry employers to ensure that marijuana businesses are complying with their obligations to file and report payroll and other employment taxes.

- ❖ **Referrals** – Many ICN investigations are initiated based on referrals from the public. Each agency has its own method for complaint intake from the public. These complaints, when relevant to other ICN agencies, are shared at monthly Enforcement and Communications Group meetings. The ICN website has a method for complaint submittal which can be anonymous. Complaints submitted through the ICN website are reviewed and forwarded to partner agencies that would be interested depending on the nature of the complaint. There have been 67 complaints received through the ICN website and distributed to ICN agencies from September 2017 through the end of 2018. Customers can also call a single point of contact with questions about the ICN, classification, or resources. These calls are usually handled with one-call resolution, with occasional referral to other agencies when necessary. Currently, the Oregon Employment Department manages the emails and calls generated from the ICN website.

In addition to complaints received from the public, agencies are working on new methods to detect non-compliance. The Oregon Employment Department is analyzing statistical audit information to detect patterns in non-compliant businesses in order to select similar businesses for audits.

Department of Justice Involvement – The Department of Justice has been actively participating in ICN enforcement activities by requesting information from agencies in order to gain evidence for prosecutions and develop strategies for case development. Although there were no criminal prosecutions resulting from ICN cases in 2017 and 2018, the Department of Justice continues to participate in ICN meetings and request assistance from ICN agencies to develop cases. The Department of Justice provides legal assistance to the Department of Revenue to attempt to collect tax debts owed by businesses, and in 2017 and 2018 reviewed and approved 19 till taps of marijuana retailers on behalf of the Department of Revenue. These location based seizures involve local law enforcement assistance and coordination to ensure safety and custody of the cash during the seizure.

Recidivism – The ICN also focuses on identifying whether previously audited businesses remain compliant after being audited or investigated. The Department of Revenue and the Oregon Employment Department analyze whether businesses subject to an audit actually file returns for the periods for which they were audited. Of the ICN audits completed in 2017 and 2018, 100% of audited businesses submitted payroll reports totaling over \$24 million in payroll. The Department of Revenue has the authority to impose a 100% penalty for failure to file required payroll tax returns, and has assessed this penalty on only 146, or approximately 3.5% of the accounts which had previously received some sort of investigation or site visit.

While this is not a definitive indicator of continued compliance it does give at least a partial picture of ongoing compliance by employers. The only way to determine if employers are remaining fully compliant is to perform another payroll audit. The Oregon Employment

Department typically does not conduct follow-up audits within a three-year period, but does investigate complaints or referrals about the business if any are received.

Complaints about recently audited businesses misclassifying workers are rarely received. Most complaints received are on businesses that either have never been audited or have a current audit scheduled. Compliance Specialists also identify new businesses who have not been following requirements and work with them to bring them into compliance.

The Workers' Compensation Division at the Department of Consumer and Business Services reinvestigated 332 businesses between 2017 and 2018. The Department of Consumer and Business Services will reinvestigate a business for violations of workers compensation coverage which are primarily the result of a notice of cancellation of coverage received from an insurance provider, and injury claims where there is no active coverage on file. Referrals and external complaints may also initiate a reinvestigation. Over the two-year period, 10 requests for injunction and 6 requests for contempt were referred to the Department of Justice.

Internal Development

The ICN is constantly working to improve methods and expand its abilities to educate the public, encourage compliance with tax and employment laws, and enhance each agency's collaborative abilities. This section describes some of the proposed efforts underway for improvement.

Single Path Appeals – The Oregon Employment Department and the Department of Revenue have been gathering data to examine whether it is advisable to pursue a potential “single-path appeals” pilot project. Currently, both agencies have separate appeal paths for each agency's tax assessments. Even in collaborative audits, appeals must take place separately with costs to both the agencies and the impacted businesses. Given the non-concurrent appeals and the expenses involved, appealing an ICN audit is costly for agencies and the public and can take months or even years. The Oregon Employment Department had started to develop options for a potential single-path appeal, where an assessment can be appealed in one forum with both agencies.

Upon the Department of Justice's review of the proposed process, the agencies determined that any attempt to convert to a single-path would result in rulings that could be deemed unenforceable by one or both agencies. The current statutes do not legally support implementation of the single-path appeal process. While a number of efficiencies could be gained from the single-path appeal, substantial statutory changes would be necessary to comply with legal due process requirements. *The ICN determined that the time was not right to make the changes necessary to move forward with single-path appeals, but was appreciative of the collaborative discussions that informed this decision. The ICN may consider the pursuit of single-path appeals in the future.*

Non-ICN Agency Involvement – On many occasions, agencies outside the ICN have played roles in furthering ICN goals, especially in regard to educational outreach. Often times the sharing of information about presentation opportunities, referrals to business conferences, and recommending ICN speakers to certain groups has resulted in many successful interactions with the public. The Oregon Secretary of State’s Office of Small Business Advocacy has been a steadfast supporter of ICN activity, as has the Oregon Health Authority and the Office of Administrative Hearings. Whether these relationships can be leveraged further to include compliance issues is worth exploring, taking into account the interests of all agencies and the requirement of new interagency agreements for ICN inclusion.

Excluded Workers – Oregon law has multiple definitions of employment used by various agencies and programs. There are also many different exemptions from the various definitions, with some exemptions applying only to some programs or requirements. The Oregon Employment Department, the Department of Revenue, and Construction Contractors Board use the definitions of “Employment” found in ORS chapter 657, with exclusions to the term occurring in ORS 657.030 and 657.040 through 657.094. The Department of Consumer and Business Services uses definitions found in ORS 656.027 for excluded employment. The ICN continues to work on a way to present this complex information in an easily accessible way. A common misconception that became evident in 2016 is the idea that workers falling under a statutory exemption are automatically considered independent contractors. At least one formal presentation was conducted to address this topic, which generated many follow-up questions and concerns from the audience. There is a benefit in differentiating between excluded workers and independent contractors, but without accurate data regarding the number of these workers, it is difficult to know how significant these efforts would be.

External Factors

ICN agencies must be reactive to certain situations beyond the control of the ICN. While ICN agencies take neutral stances on these topics, they can require a reassessment of how an agency will conduct business.

Court of Appeal Decisions – Four separate Court of Appeals decisions found workers to be independent contractors after the Oregon Employment Department found the workers to be employees. These different interpretations of ORS 670.600 have expanded the group of workers that are considered independent contractors, and clarify how the Oregon Employment Department and the Department of Revenue apply the independent contractor statute.

Gig Economy Service Providers – Another development in Oregon is the influx of companies that offer transportation network services or other services which liaise between a customer desiring service and an individual agreeing to provide such service. Some agencies have released official opinions on these businesses, while others address worker classification issues on a case-by-case basis. Audits of these businesses are time consuming due to the nationwide scale of some of these businesses, and acquisition of records is difficult. Some businesses are

not located in Oregon and are reluctant to cooperate. ICN agencies continue to monitor opinions from other states and agencies, and will apply Oregon law appropriately.

Marijuana Businesses – Ballot Measure 91 (2014) and legislation passed in subsequent legislative sessions allows for recreational marijuana sales and use in Oregon. The state law conflicts with federal law (as do similar laws allowing marijuana use in other states) and presents a unique challenge to workers, employers, and state regulatory agencies. Most banks are subject to federal banking regulation, and since marijuana sales are federally prohibited, banks cannot accept cash deposits resulting from marijuana sales. This forces recreational dispensaries to retain large amounts of cash that cannot be secured in banks. Businesses with a surplus of cash could be tempted to pay employees in cash, also potentially avoiding payment of required taxes. Businesses that remain compliant and pay all required obligations must do so in cash as well, and to accommodate this, the Department of Revenue constructed a state-of-the-art payment processing center to accept large payments of cash from these businesses.

The temptation to pay workers “under the table” can best be addressed through diligent contact with recreational marijuana employers. The Oregon Employment Department, the Department of Revenue, and the Department of Consumer and Business Services have collaborated with the state agency administering recreational marijuana sales, the Oregon Liquor Control Commission, to be included in their Business Readiness Guide. This resource contains several entries from various agencies that wish to communicate and offer resources to businesses on how to comply with laws and rules that apply to them.

Both the Bureau of Labor and Industries and the Department of Consumer and Business Services have noticed a recent increase in non-compliance from marijuana businesses, including paying workers in cash under the table, failing to obtain worker’s compensation, and stating that all workers are independent contractors. Efforts are being made to address non-compliance, including discussions of combined outreach specifically to marijuana businesses to help bring them into compliance. The Department of Consumer and Business Services has investigated 21 marijuana businesses since October of 2015, seven of which were due to injury claims.

Worker permits are required by the Oregon Liquor Control Commission for work within the marijuana industry, as of January 2019 approximately 59,000 workers have received a worker permit. As ICN agencies review this new industry to insure compliance, data like the number of workers licensed for employment allows ICN agencies valuable information in identifying industry trends.

Marijuana businesses are required to track information related to marijuana items in a Seed-to-Sale database, as part of the regulatory framework for Oregon’s recreational marijuana industry. The Department of Revenue has access to this database and is able to use the data to identify non-compliance with Oregon’s marijuana tax as well as identify businesses that are no longer active or have not registered for Oregon’s Combined Payroll reporting. If a business is tracking activity in the seed to sale database but has not registered with the Department of Revenue compliance specialists are sent to inform the business and encourage the business to

register. The Department of Revenue also works with the Oregon Liquor Control Commission to identify noncompliant businesses to include in administrative activity to suspend, revoke, or deny a recreational marijuana license consistent with the Oregon Liquor Control Commission's administrative hearings process.

Conclusion - Issues with misclassification of independent contractors happens in part from ambiguity in the definition of independent contractor as provided in ORS 670.600. The definition of independent contractor provides employers discretion in making these determinations. For employers seeking to "game the system," misclassifying workers as independent contractors comes with presumed financial benefits to the employer. This financial incentive may create a conflict of interest in which bad actors may (mis)classify employees as independent contractors and hope that ICN agencies that perform compliance audits do not audit the business. Increased clarity on the definition of independent contractor may indeed shift the incentives to make erroneous classifications. Additionally, because the test in ORS 670.600 depends on weighing a number of different factors, investigating worker classification issues can be a resource intensive process for agencies, and can lead to even more resource intensive litigation. The weighing of multiple factors in ORS 670.600 also means that even after this process has been completed, a business might make a very minor change in its relationship with workers, requiring the investigation and potential litigation cycle to start over.

Regardless, increased investment in ICN agency enforcement reach will increase the likelihood that those businesses misclassifying workers in order to avoid correct application of Oregon law are discovered and employees are appropriately classified. This approach would also minimize any major impacts to businesses who appropriately classify workers as independent contractors.

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