



House Interim Committee on Business and Labor

Worker Status – Employee or Independent Contractor

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Impact of being Independent Contractor

- Independent contractors are not covered by many programs
 - Unemployment insurance
 - Workers Compensation
 - Minimum wage, overtime, etc.
 - Payroll tax withholding
 - Employment non-discrimination
 - Leave laws (OFLA, etc.)
- Maintaining a level playing field for businesses

Different Definitions

- “Employee,” “employer” and “independent contractor” have different definitions across state programs
- Federal programs also have different definitions
- Decisions about program coverage have different appeal routes

Agency-specific Exclusions

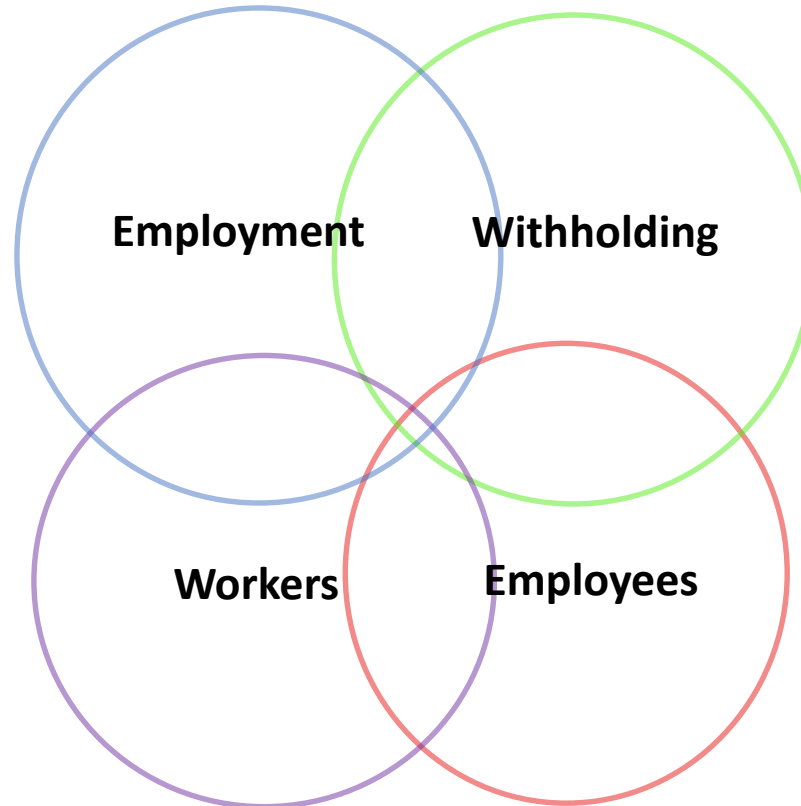
OED

- Child care and foster care workers.
- Door to door salesperson.
- Elected public officials.
- Farm workers.
- Federal worker.
- Food product demonstrators.
- Governmental policymakers or advisors.
- Governmental work program participants.
- Home improvement contract solicitors.
- Impaired worker program participants.
- Insurance agents or solicitors.
- Legislative body or judiciary members.
- Media stringers, correspondents, and photographers.
- Newspaper advertising salespersons.
- Oregon national guards.
- Organized camp student workers.
- Patient workers.
- Performers or contestants.
- Petroleum products distributors.

DCBS

- Amateur athletes.
- Casual laborer.
- Commuter ride-sharers.
- Firefighters and police.
- Foster parent or adult foster care providers.
- Haulers.
- Ship worker.
- Student nurses or workers.
- Student workers.
- Temporary emergency workers.
- For-hire truck drivers.

- Amateur athletes.
- Casual laborer.
- Commuter ride-sharers.
- Firefighters and police.
- Foster parent or adult foster care providers.
- Haulers.



DOR

- Agricultural laborers.
- Armed forces servicemembers.
- Casual laborer.
- Firefighters.
- Ministers.

BOLI

- Adult foster home resident managers.
- Babysitters.
- Campground hosts.
- Conference center workers.
- Domestic or child care service.
- Family laborer.
- Golf course marshals.
- Mobile or manufactured home park managers or maintenance workers.
- On-call service providers.
- Outside salespersons.
- Seasonal organized camp workers.
- Student workers.
- Volunteer firefighters.

- Home gardeners or handypersons.
- Property tax work-off program participants.
- Religious, charitable, or relief workers.

Common tests throughout the nation

- “Right to control” the work – 20 factor test used by IRS
- Newer three part IRS test (behavior, financial, and relationship control)
- “ABC” test
 - A) Direction and control
 - B) Work is outside the hiring entity’s usual course of business
 - C) Worker has their own business doing that type of work
- “Economic Reality” test

State Agency Criteria for INDEPENDENT CONTRACTORS

	ORS 670.600	Economic Reality Test	Right-to-Control Test	Nature-of-the-Work Test
Agency	Department of Revenue Employment Department Construction Contractors Board Landscape Contractors Board	Bureau of Labor and Industries - Wage and Hour Division	Bureau of Labor and Industries - Civil Rights Division & Workers' Compensation Division	Workers' Compensation Division (Where Right-to-Control Test proves inconclusive)
Criteria	Worker must meet all of the requirements of ORS 670.600 to be considered an independent contractor.	Five factors of the test are weighed to determine whether worker is an independent contractor as a matter of economic reality. No single factor is determinative.	Four factors of the test are weighed to determine whether a worker is free from the right to control by the business receiving the worker's services. No single factor is determinative.	Considers the character of the work or business, as a supplement to the Right-to-Control test.
Factors	<ol style="list-style-type: none"> 1. 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 result; and 2. Customarily engaged in an independently established business; and 3. Licensed under ORS 671 or 701 (CCB, State Landscape Architect Board or LCB and State Board of Architect Examiners) if required for the service; and 4. Responsible for other licenses or certificates necessary to provide the service. 	<ol style="list-style-type: none"> 1. The degree of control exercised by the alleged employer; 2. The extent of the relative investments of the worker and alleged employer; 3. The degree to which the worker's opportunity for profit and loss is determined by the alleged employer; 4. The skill and initiative required in performing the job; 5. The permanency of the relationship. 6. The extent to which the work performed by the worker is an integral part of the alleged employer's business 	<ol style="list-style-type: none"> 1. Direct evidence of the right to, or the exercise of, control; 2. The method of payment; 3. The furnishing of equipment; 4. The right to fire. 	<ol style="list-style-type: none"> 1. How much is the work a regular part of the hiring entity's business? 2. How skilled is it? 3. Is the work continuous or intermittent? 4. Is the duration sufficient to amount to the hiring of continuous services as distinguished from contracting for completion of a particular job? 5. To what extent may it be expected to carry its own accident burden?



The ORS 670.600 Test

- Free from direction and control over means and manner of work;
- Licensed as architect, landscape contractor, or construction contractor if the work requires licensure;
- Responsible for other needed licenses or certificates; and
- Customarily engaged in an independently established business.

Meets at least 3 of these:

- Maintains a separate business location
- Bears the risk of loss related to the work
- Significant investment in the business
- Authority to hire and fire others
- Did contracted services for at least 2 different people in 12 month period or routinely does business advertising

The Economic Reality Test

- Degree of control;
- Extent of the relative investment;
- Degree to which the worker's opportunity for profit and loss is determined by the alleged employer;
- Required skill and initiative to perform the job; and
- Permanence of relationship

The Right-to-Control Test

- Right to, or the exercise of control;
- Method of payment;
- Furnishing of equipment; and
- Right to fire.

The Nature-of-the Work Test

- How much of the work is a regular part of the hiring entity's business?
- How skilled is the work?
- Is the work continuous or intermittent?
- Sufficient duration?
- To what extent may it be expected to carry its own accident burden?

Interagency Compliance Network

- Statutory collaboration among agencies for enforcement and education – Created in ORS 670.700 in 2009
- www.Oregon.gov/IC – references for businesses and workers
- Joint audits and coordinated enforcement efforts

Thank You

