

OUR INSIGHTS

Connecticut Supreme Court Provides Guidance on Independent Contractor Classification

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The Connecticut Supreme Court has ruled that an individual can be considered an independent contractor even if he or she provides services to only one employer. The court's decision, which was officially released on March 21, 2017, is important for any Connecticut business that utilizes contractor services.

Overview

In *Southwest Appraisal Group, LLC v. Administrator, Unemployment Compensation Act*, the Connecticut Supreme Court reviewed a trial court's decision that found an automotive appraisal company had misclassified three automobile appraisers and, as a result, owed back taxes and interest related to their employment. The appraisal company, Southwest Appraisal Group, classified the three appraisers as independent contractors, rather than employees, and paid no unemployment taxes on their accounts. Each of the three appraisers operated their own businesses, but, importantly, none of those businesses performed services for any third parties other than Southwest Appraisal Group.

ABC Test

In making the determination as to whether a service provider is an employee or independent contractor, courts in Connecticut use a three-prong "ABC test." For an individual to be classified as an independent contractor, the ABC test requires evidence that: (A) the worker is free from direction and control of the employer; (B) the services the worker provides are outside the employer's usual course and/or place of business; and (C) the worker is customarily engaged in an independently established business of the same nature as the services performed. If an employer can show that a worker meets all three prongs of the ABC test, the worker is properly considered an independent contractor.

Utilizing the ABC test, the lower court held that the appraisers should have actually been classified as employees, rather than independent contractors. The ruling was despite evidence that the three appraisers owned their own equipment, utilized registered business names, and had business cards with their own contact information and licenses. Nonetheless, the trial court found them to be employees by relying on the fact that the three appraisers did not perform work for any third parties other than Southwest Appraisal Group during the relevant time period. For this reason, the court determined that the individuals were employees of the appraisal company since they did not meet part C of the ABC test. The court essentially reasoned that because the appraisers would have no work if not for the

appraisal company, it could not be shown that they were customarily engaged in business independent of the appraisal company. The appraisal company appealed the decision.

Connecticut Supreme Court and Part C of the ABC Test

The sole issue before the Connecticut Supreme Court was whether part C of the ABC test requires proof that a worker performs services for third parties other than the putative employer. The court reviewed and reversed the trial court's decision. The court held specifically that "evidence of the performance of services for third parties is not required to prove part C of the ABC test but, rather, *is a single factor that may be considered under the totality of the circumstances analysis governing that inquiry* [emphasis added]." The court then set out 10 factors in "evaluating the totality of the circumstances under part C," only one of which is work for more than one entity:

1. the existence of state licensure or specialized skills;
2. whether the putative employee holds himself or herself out as an independent business through the existence of business cards, printed invoices, or advertising;
3. the existence of a place of business separate from that of the putative employer;
4. the putative employee's capital investment in the independent business, such as vehicles and equipment;
5. whether the putative employee manages risk by handling his or her own liability insurance;
6. whether services are performed under the individual's own name as opposed to the name of the putative employer;
7. whether the putative employee employs or subcontracts others;
8. whether the putative employee has a saleable business or going concern with the existence of an established clientele;
9. whether the individual performs services for more than one entity; and
10. whether the performance of services affects the goodwill of the individual rather than the company for which he or she is performing services.

Key Takeaways

The decision provides useful guidance for Connecticut businesses as to whether to classify an individual as an employee or an independent contractor. A correct determination is vital as it will impact numerous aspects of the working relationship, including whether the company provides fringe benefits such as health insurance and vacation time, and whether it owes unemployment and other payroll taxes. The court's holding can ease the fear of businesses that contract with legitimate individual-owned small businesses that may not have other service contracts at the time. In the end, best practice is for a company to regularly evaluate its independent contractor relationships to ensure that the totality of the circumstances supports the selected classification of the relationship.

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