

“Employee or Independent Contractor – Eleven Facts Every Oregon Business Owner Must Know.”

Oregon businesses use independent contractors for a variety of reasons. Many do so in order to avoid the administrative headache of managing payroll, or because they need specialized services performed. In most cases, the decision to use an independent contractor instead of an employee can be traced to one primary goal: saving money.

Unfortunately for many Oregon employers, improperly classifying an employee as an independent contractor can end up costing far more in the long run. The Oregon Employment Department and the Oregon Revenue Department are increasing enforcement actions against small and medium-sized businesses that utilize independent contractors. Many times these claims arise when a former independent contractor decides to file a wage claim against the business.

The definition of an independent contractor under Oregon law is complex and highly subjective. Consulting with an experienced attorney is the safest way to be certain that workers are properly classified. The following chart is useful in identifying some of the differences between an independent contractor and an employee:

Independent Contractor

- Free from direction and control
- Has necessary skills to perform given task
- Performs services for multiple customers
- Owns equipment and tools needed for the job
- Has right to hire and fire workers
- Not eligible for employee benefits

- Has an independent business location

Employee

- Means and manner of work controlled by employer
- Trained by the employer
- Works for one employer
- Employer provides and controls equipment and tools
- Is hired / fired by the employer
- May be covered by minimum wage, overtime, safety, unemployment, and works comp.
- Works at the employer’s business location

Here are eleven facts that all Oregon business owners should be aware of:

Fact #1: Both the Oregon Employment Department and the Oregon Revenue Department are increasing investigations and enforcement actions involving independent contractors.

Fact #2: Many Oregon businesses incorrectly classify employees as independent contractors.

Fact #3: An enforcement action is time consuming, can result in significant legal expenses, and may result in back taxes, fines, interest, and penalties.

Fact #4: Claims for unpaid employment taxes often arise when an independent contractor files a wage claim with the State.

Fact #5: With planning and preventative action, employers can correctly classify employees and independent contractors and avoid costly litigation.

Fact #6: Certain categories of employees may be exempt from overtime and minimum wage requirements as long as they meet certain specific requirements involving job duties and method of payment.

Fact #7: Depending on the state agency, the test for whether one is an independent contractor as opposed to an employee is different. For example, the test used by the Department of Revenue, Employment Department, Construction Contractors Board and Landscape Contractors Board is different than the criteria used by the Bureau of Labor of Industries, which is also different from the test used by the Workers' Compensation Division.

Fact #8: The existence of an independent contractor agreement is often irrelevant to the question of whether one is an independent contractor or an employee.

Fact #9: Whether or not you file 1099-MISC forms for independent contractors is not determinative of whether or not the entity/person is an independent contractor or an employee.

Fact #10: Hiring a business entity, such as a corporation, partnership, or limited liability company, to do work for you is not determinative of whether or not the entity/person is an independent contractor or an employee.

Fact #11: Hiring a person or company that is unlicensed by the Construction Contractors Board, State Landscape Architect Board or Landscape Contractors Board, to do work when that work is required to be done by a licensed professional, can make it so that the work performed is automatically NOT done by an independent contractor in certain circumstances.

If you have any questions about employees, independent contractors or any other issues facing your business, please contact Matthew Ellis or James Bruce at Kell Alterman & Runstein, LLP. By making time now to evaluate your company's employment situation, you could avoid significant time and expense in the future.

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