

**NOVEMBER 19, 2009**  
**OVERVIEW OF INDEPENDENT CONTRACTOR LAW**

**A. Oregon's Independent Contractor Law**

- a. An *independent contractor* is an individual or business entity that:
  - i. Provides a service under contract;
  - ii. Is free from the *direction and control* of another;
  - iii. Is customarily engaged in an *independently established business*; and,
  - iv. If required, holds a license.
  
- b. *Direction and control* means that the contractor determines:
  - i. What plans, labor, supplies, equipment, and other items to use; and
  - ii. The work schedules, work procedures, and other processes.
  
- c. An *independently established business* is a business that:
  - i. Operates at a location separate from the contractor's home (or in a discrete part of the home);
  - ii. Bears a risk of loss related to the business;
  - iii. Provides services for two or more people in a 12-month period;
  - iv. Has a significant amount invested in its operations; and
  - v. Has the authority to hire others.
  
- d. To qualify as an independent contractor performing construction, an individual or business entity must obtain a license from the Construction Contractors Board.

**B. Importance to Oregonians, Workers and Businesses**

- a. One reason the independent contractor law is important is that it distinguishes independent contractors from employees. Both state and federal law provide certain protections for employees that independent contractors do not have. The rationale is that independent contractors, being their own business, will already have protection.
  
- b. If a person contracts with an independent contractor to provide services, the person does not need to (1) provide workers' compensation, (2) pay state unemployment taxes, (3) pay federal social security taxes, or (4) withhold from wages. In contrast, if a person hires an employee to provide services, the person, as the employer, must provide all of these.

### **C. Recent Legislation That Affect Independent Contractor Law**

- a. Until 2003, the “tests” that Oregon applied to determine whether a person was an independent contractor or an employee were based on court decisions. In 2003, the legislature created a statutory test in ORS 670.600.1
- b. 2009 Interagency Compliance Network.

### **D. Obligations of Construction Contractors and Construction Workers under the Law**

- a. To become a licensed construction contractor, a person must first be an independent contractor. ORS 701.035(1). A person who is an employee of a license contractor does not need to be licensed. ORS 701.010(9).
- b. A contractor or a homeowner may become an employer by hiring unlicensed construction workers and directing and controlling their job. The contractor or homeowner may then be obligated for workers’ compensation, unemployment taxes, and social security taxes. This is one reason that it is crucial for contractors and homeowner to use licensed contractors who are independent contractors.

### **E. CCB Exempt versus Non-Exempt Contractors**

- a. Before becoming licensed, a business must choose one of two classes: (1) exempt or (2) nonexempt. ORS 701.035(2).
- b. The exempt class consists of businesses that do not have employees. For example, a sole proprietor that does all of his or her own work is exempt. The nonexempt class consists of businesses that employ (or may want to employ) individuals. The Construction Contractors law allows some small family businesses to qualify as exempt.

### **F. HB 2815—Interagency Compliance Network**

- a. House Bill 2815 establishes an Interagency Compliance Network (ICN) to enforce compliance with taxation, employment and independent contractor laws. It will focus on Oregon’s underground economy where millions of dollars are lost to the state when employees are paid in cash to avoid payment of taxes and assessments. The ICN is made up of seven state agencies, including CCB.<sup>2</sup>

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<sup>1</sup> The bill was last amended in 2005 and remains unchanged since.

<sup>2</sup> The other state agencies are: (1) Department of Justice; (2) DOR; (3) Employment; (4) Department of Consumer and Business Services; (5) Bureau of Labor and Industries; and (6) Landscape Contractors Board.

- b. The ICN is tasked with the following:
- Working to establish consistent interpretations relating to worker classification, e.g. as an independent contractor or an employee;
  - Gathering and sharing information about persons who pay workers in cash and who do not pay required taxes or assessments;
  - Gathering and sharing information about misclassification of workers;
  - Developing investigative methods for auditing persons who pay workers in cash and others;
  - Conducting joint audits;
  - Creating a coordinated enforcement process;
  - Educating the public on the distinction between independent contractors and employees and on the laws governing the duties relating to each; and
  - Taking such other actions as the ICN members deem appropriate.
- c. ICN members may enter into agreements with each other to share information that would otherwise be confidential. The law is already in effect.