



Independent Contractors versus Employees: The Latest from the Oregon Supreme Court

By Nicole Elgin

The question of whether a person qualifies as an independent contractor versus an employee is an increasingly important one in the rise of the “gig economy.” For business owners, it can also be an expensive question to get wrong, considering the various taxes, insurance, and benefits – not to mention the penalties – that a business owner might owe if the state determines that what the business called “contractors” are actually “employees.”

As recently as May 2018, the Oregon Supreme Court weighed in on the test for determining whether an individual qualifies as an independent contractor for purposes of unemployment insurance tax in *ACN Opportunity, LLC v. Employment Department*, 362 Or 824 (2018). ACN Opportunity sold satellite-television, telephone, Internet, and home-security services, as well as other items related to those services. The company used a network of direct-to-consumer sellers that it called “independent business owners.”

In auditing the company, Oregon’s Employment Department found that the company was an employer, and therefore required to pay unemployment-insurance tax on the earnings the company paid to the independent business owners for their sales. On appeal, the Oregon Supreme Court addressed the statutory interpretation questions and affirmed that the independent business owners were not independent contractors.

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