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Employee or Independent Contractor?

Connecticut Supreme Court Relaxes Burden of Proving Independent Contractor Relationships under State Unemployment Compensation Law

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The risk of liability for misclassifying employees as independent contractors has been high due to federal and state enforcement initiatives, information-sharing arrangements, and complex legal tests for determining whether a worker is an independent contractor. In most situations, government agencies (and the courts) tend to find that workers are employees. However, in a surprising reversal of the trend of annulling independent contractor relationships, the Connecticut Supreme Court, in the case of *Standard Oil of Connecticut, Inc. v. Administrator*, *Unemployment Compensation Act* (March 15, 2016), ruled that certain technicians who install and service heating, cooling, and security systems were independent contractors, not employees. As a result of this ruling, Standard Oil was not required to pay unemployment contribution taxes for those workers.

The statutory ABC test for determining independent contractors under the Connecticut Unemployment Compensation Act requires that an employer prove (A) that the worker "has been and will continue to be free from control and direction in connection with the performance of such service," (B) that the worker's service "is performed either outside the usual course of the business for which the service is performed or is performed outside all of the places of business of the enterprise," and (C) that the worker "is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed."[1] The issue in this case concerned ABC test parts (A) and (B), as there was no dispute that these technicians, when not performing services as independent contractors, were employees of independently established businesses performing the same services.

In the close decision (4-3), the Connecticut Supreme Court determined that the technicians performed services "free from control and direction" of Standard Oil. The facts showed that Standard Oil advertised the installation of heating, cooling, and security systems; made appointments with customers for such services; and then hired licensed technicians to perform those services. Standard Oil paid the technicians a fixed price per installation, required them to submit invoices for payment, and required them to complete the job in a satisfactory manner. The technicians signed independent contractor agreements, stating that they agreed to exercise independent discretion, that they could accept or reject any assignment, and that they were not supervised by Standard Oil, as they were licensed by the state and must meet certain standards for installation. The technicians were not treated as employees of Standard Oil; they did not receive an employee handbook; they could hire their own staff as needed; they could realize a profit or loss from any assignments; and they provided their own tools, transportation, and insurance. Based on these facts, the Supreme Court ruled that the technicians were free from control and direction necessary to make them employees of Standard Oil.

The Supreme Court also determined that Standard Oil proved that the technicians performed services "outside of all the places of business" of Standard Oil. The Court rejected the argument that, because Standard Oil contracted directly with customers to install and service heating and cooling equipment and security systems, the customers' homes became places of business. While recognizing that, in some situations, an employer's place of business may extend beyond headquarters, office buildings, or physical plants to locations such as homes, roadways, and construction sites, the Court in this case explained that the term "premises" required some degree of control by the employer, Standard Oil. Otherwise, the term "premises" would be so broad that it would be impossible for an employer to meet that prong of the statutory test. Therefore, the Court concluded that the phrase "places of business" did not extend to the homes of Standard Oil's customers where the technicians worked unaccompanied by any Standard Oil personnel and without Standard Oil's supervision.

The three dissenting justices, recognizing that employer contributions need to fund unemployment compensation benefits and that the ABC test must be narrowly construed, explained that the majority had lowered the high legislatively set bar that an employer must surmount to avoid contributions to the unemployment compensation fund. The dissent noted that Standard Oil sold customers "installed" heating and cooling equipment and security systems and, accordingly, reasoned that installation of equipment was a normal part of its business. The dissent also relied on case law from other jurisdictions extending "places of business" to a long list of locations other than traditional brick and mortar facilities. The dissent found nothing improper in the trial court's conclusion that, because Standard Oil contracted with customers to install and service equipment in their homes, those same homes would be considered "places of business" when the technicians performed services in those homes.

As noted by both the majority and the dissent in *Standard Oil*, these cases are highly fact specific and rely on technical application of the relevant law. Misclassification issues arise in applying discrimination laws, wage and hour laws, benefits plan coverage, insurance coverage, workers' compensation coverage, and other contexts beyond unemployment compensation, and different rules may apply. In challenging claims for misclassification of workers, employers may wish to consult with experienced employment counsel.

For more information or if you have questions about how the issues raised in this legal update affect your policies, practices, or other compliance efforts, please contact one of the following lawyers in the firm's Labor, Employment, Benefits + Immigration Group.

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1. Conn. Gen. Stat. § 31-222(a)(1)(B)(ii)(I), (II), & (III).

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