

NEWS ALERT

LABOR & EMPLOYMENT



Connecticut Supreme Court Provides Guidance on Test for Independent Contractors

By Michael C. Harrington and Madiha M. Malik | March 17, 2017

In a recent decision, the Connecticut Supreme Court held that an individual can be considered an independent contractor even if he/she works with only one company. Southwest Appraisal Group, LLC v. Administrator, Unemployment Compensation Act (Conn. 2017).

FACTS

Southwest Appraisal Group is an automotive damage appraisal business who regularly contracts with independent appraisers for a flat fee. Upon conducting an audit of Southwest's taxes, the Unemployment Compensation Act Administrator asserted that Southwest had misclassified some individuals as independent contractors, when they should have been classified as employees. Southwest filed suit, challenging the Administrator's decision. The trial court sided with the Administrator, reasoning that the individuals in dispute were employees because there was no evidence that the individuals performed work for anyone besides Southwest.

In overturning the trial court's decision, the Connecticut Supreme Court explained that whether an individual performs services for other parties is not by itself sufficient to determine whether an employment relationship exists or not.

INDEPENDENT CONTRACTOR TEST FOR UNEMPLOYMENT COMPENSATION TAXES

Under Connecticut law, the "ABC" Test has long been applied to determine whether an employment relationship exists under the Unemployment Compensation Act. To be considered an independent contractor under the Act, the three factors of the ABC Test must each be met:

- A. The individual is not directed or controlled, but works independently when performing the service, both under the contract for providing the service and in reality;
- B. The service provided by the individual is not within the usual course of business of the employer or is performed outside all the employer's places of business; and
- C. The individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as the service performed.

Companies who use independent contractors must be prepared to prove each of the elements of the ABC Test.

In Southwest, the Supreme Court provided valuable guidance that when evaluating the totality of circumstances under Part C, the following factors should be considered as they are indicative of the independent nature of the contractor's business:

- (1) The individual possesses a state license or specialized skills;
- (2) The individual holds himself or herself out as an independent business through business cards, printed invoices, or advertising;
- (3) The individual has a place of business separate from that of the potential employer;
- (4) The individual has capital investment in the independent business, such as vehicles and equipment;
- (5) The individual has his/her own liability insurance, showing that they manage their own risk;
- (6) The individual performs services under his/her own name, as opposed to the potential employer's name;
- (7) The prospective employer uses other subcontractors as well;
- (8) The individual has a saleable business or going concern with the existence of an established clientele;
- (9) The individual performs services for more than one entity; and
- (10) The performance of services affects the goodwill of the individual rather than the employer.

The existence of some or all of these factors can be used to prove Part C of the ABC Test.

TAKE-AWAY:

Companies who use independent contractors must be prepared to prove each of the elements of the ABC Test. When evaluating Part C, evidence that the individual performs services for other parties is relevant, but cannot by itself determine whether an employment relationship exists. Companies may now utilize the various factors provided by the Supreme Court to prove Part C.

If you have any questions regarding the information included in this bulletin, please contact:

Michael C. Harrington at 860.240.6049 or mharrington@murthalaw.com or

Madiha M. Malik at 860.240.6164 or mmalik@murthalaw.com

Michael Colgan Harrington, Chair

860.240.6049

mharrington@murthalaw.com

Susan J. Baronoff

617.457.4031

sbaronoff@murthalaw.com

Emily G. Brown

617.457.4121

ebrown@murthalaw.com

Donald Griffith II

860.240.6133

dgriffith@murthalaw.com

Madiha M. Malik

860.240.6164

mmalik@murthalaw.com

Lissa J. Paris

860.240.6032

lparis@murthalaw.com

Rachel Faye Smith

617.457.4023

rfsmith@murthalaw.com

Sonia Macias Steele

617.457.4118

ssteele@murthalaw.com

Barry J. Waters

203.772.7719

bwaters@murthalaw.com

Kristen L. Zaehring

203.653.5406

kzaehring@murthalaw.com

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