Labor and Employment Alert: Connecticut Supreme Court Teaches the "ABCs" of Independent Contractor Status

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Connecticut has long used the "ABC Test" for determining whether an individual is an employee or independent contractor for purposes of the state's unemployment compensation law. Recently, in *Standard Oil v. Administrator, Unemployment Compensation*, the Connecticut Supreme Court expanded the test for determining who qualifies as an independent contractor.

Unlike the Internal Revenue Service's 20-factor test, Connecticut's ABC Test for determining independent contractor status has only three parts. To be exempt from Connecticut's unemployment tax, all three parts must be met. Part A looks at the direction and control an employer exercises over the worker. Part B concerns where the work is performed; to be an independent contractor, a worker must perform a service outside the employer's usual course of business or outside the employer's place of business. Part C looks at whether the worker is customarily engaged in an independently established trade, occupation, business, or profession that is the same as the work being performed.

Standard Oil sells and installs home heating and alarm systems. The company contracts with individuals to perform the installation and servicing of these systems and considers them to be independent contractors, not employees. Consequently, the company did not pay the state's unemployment tax for these workers. The Connecticut Department of Labor audited the company and determined that the installers had been misclassified as independent contractors. Standard Oil appealed this determination before the Department of Labor and the superior court; each one upheld the finding that the installers were employees. The Connecticut Supreme Court reversed and found that Parts A and B of the ABC Test established that the installers were independent contractors. (Part C was not at issue because the Department of Labor had found that the workers – who had their own businesses, equipment, and advertising – were engaged in an independently established trade.)

First, as to Part A, the Court found that the installers were free from Standard Oil's direction and control. The Court explained that the installers could reject assignments, determine when to complete the work, hire their own assistants, were not trained by Standard Oil, were not supervised while working in the customers' homes, and used their own tools and equipment. As the Court noted, "The installers/technicians were free to accept or reject any assignment offered to them without adverse consequences."

As to Part B, the Court examined whether the homes where installers performed their work qualified as Standard Oil's "places of business." The Department of Labor had taken a broad interpretation which "would have the practical effect of preventing the [company] or any other Connecticut business from ever utilizing the services of an independent contractor." The Court explained that, in analyzing Part B, a "court should consider the extent to which the employer exercised control over the location where the independent contractor worked." Given this, the Court held that "the meaning of 'places of business' in the present context should not be extended to the homes in which the installers/technicians worked, unaccompanied by the [company's] employees and without the [company's] supervision."

Employers need to remember that the rules for determining whether a worker is an employee or independent contractor vary from state to state and from federal law to state law. In addition, given the U.S. Department of Labor's expansive view that most workers are actually employees, the price for misclassifying a worker is high – back wages, benefits, and taxes as well as potential fines, penalties, and attorney's fees. Contact your Vorys lawyer if you have questions about independent contractor classification.