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# **INDEPENDENT CONTRACTOR OR EMPLOYEE?**

## **Making the Right Decision**

A presentation on worker classification  
and independent contractor issues in Oregon

Sponsored by these Oregon agencies:

Employment Department  
Department of Revenue  
Workers Compensation Division  
Construction Contractors Board  
Landscape Contractors Board  
Bureau of Labor and Industries



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**INDEPENDENT CONTRACTOR  
OR EMPLOYEE?**

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## 1. Overview: appropriate worker classification

*"Employment taxes, fringe benefit contributions, recordkeeping requirements . . . couldn't I just hire a contractor instead?"*

—————  
*"It's good to be the king!"*  
—————

It's true; many of the legal obligations placed on employers do not apply to their business relationships with independent contractors. By the same token, independent contractors typically enjoy a level of autonomy that is simply unavailable to employees.

Unfortunately, businesses and workers alike too often fail to realize that under Oregon law, specific legal criteria distinguish an "independent contractor" from an "employee." Confusing these two distinct types of working relationships can result in the misclassification of workers – and some very expensive consequences:

**Employees** misclassified as independent contractors risk the loss of the legal benefits and protections of employee status (like unemployment insurance, minimum wage and overtime protections and workers compensation) as well as benefits often afforded regularly classified employees (like sick leave, vacation and retirement benefits).

**Businesses** which engage workers as independent contractors (who do not meet the specific requirements of the law) risk liability for unpaid back taxes, unpaid insurance premiums, unpaid wages and overtime as well as penalties and interest. In addition, businesses may be responsible for workers compensation claims and liability for employee benefits or employee negligence.

These materials are provided as a general summary and teaching guide to help businesses and workers understand the requirements of state law for classifying workers as either independent contractors or employees.

For further information on these requirements, please refer to the contact information in section 8 of this handout. In order to determine the legality of any particular matter, to protect your legal rights, or to obtain legal advice, you should obtain the assistance of a lawyer.

## 2. What is an independent contractor?

*A worker who provides services for remuneration is generally considered an employee by the courts and state regulatory agencies - unless that worker also meets the criteria required of an independent contractor.*

In making classification determinations, both the courts and regulatory agencies apply certain criteria to the facts of each case to determine:

1. whether the worker in question is free from direction and control; and usually
2. whether the worker is, as a matter of economic reality, independent of the business to which services are being provided, i.e., whether the worker is in business for himself or herself.

If these requirements are not met, the worker in question is generally classified as an employee, regardless of how the relationship is characterized on paper or by the parties involved.

In fact, there are a number of considerations which are **not** determinative in deciding whether a worker is an independent contractor:

- The creation or use of a business entity, such as a corporation or a limited liability company, by an individual for the purpose of providing services does not, by itself, establish that the individual provides services as an independent contractor.
- A contract in which the worker is assigned the label of "independent contractor."
- Payment to the worker is reported by way of a Form 1099 rather than a Form W2.

## 3. What are the criteria for an independent contractor?

*To a certain extent that will depend on who you ask.*

The application of laws administered by a number of state agencies depend on whether a worker is an employee or an independent contractor. Although there are broad similarities, not all agencies use the same criteria to gauge a worker's degree of freedom from direction or control or economic independence.



Oregon Revised Statute (“ORS”) 670.600 provides a legal definition for the term “independent contractor” for the following agencies:

- Department of Revenue,
- Employment Department,
- Construction Contractors Board, and
- Landscape Contractors Board.

These agencies require that the worker meet **all** the criteria of ORS 670.600 in order to be considered an independent contractor.

Both the Bureau of Labor and Industries (BOLI) and the Department of Consumer and Business Services' Workers Compensation Division are required by court decisions to use different criteria to determine independent contractor status.

A summary of these criteria has been included as an appendix to this handout: “State Agency Criteria Table.”

#### **4. ORS 670.600**

Under this law, workers may be properly classified as independent contractors provided they:

1. Are free from direction and control, beyond the right of the service recipient to specify the desired result, **AND**
2. Are licensed under ORS 671 or 701 (State Landscape Architect Board or Landscape Contractors Board and State Board of Architect Examiners or Construction Contractors Board) if licensure is required for the service, **AND**
3. Are responsible for other licenses or certificates necessary to provide the service **AND**
4. Are customarily engaged in an “independently established business.”

To qualify under the law, an “independently established business” must meet 3 out of the following 5 criteria):

1. Maintain a business location that is:
  - a. Separate from the business or work location of the service recipient; or
  - b. that is in a portion of their own residence that is used

- primarily for business.
2. Bear the risk of loss, shown by factors such as:
    - a. Entering into fixed price contracts;
    - b. Being required to correct defective work;
    - c. Warranting the services provided; or
    - d. Negotiating indemnification agreements or purchasing liability insurance, performance bonds, or errors and omissions insurance.
  3. Provide contracted services for two or more different persons within a 12-month period, or routinely engage in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.
  4. Make a significant investment in the business through means such as:
    - a. Purchasing tools or equipment necessary to provide the services;
    - b. Paying for the premises or facilities where the services are provided; or
    - c. Paying for licenses, certificates or specialized training required to provide the services.
  5. Have the authority to hire and fire other persons to provide assistance in performing the services.

Additional provisions:

1. A person who files tax returns with a Schedule F and also performs agricultural services reportable on a Schedule C is not required to meet the independently established business requirements
2. Establishing a business entity such as a corporation or limited liability company, does not, by itself, establish that the individual providing services will be considered an independent contractor.

Feel free to consult the full text of ORS 670.600 and its implementing regulations, which included as an appendix to this handout.

## 5. Bureau of Labor and Industries (BOLI)

BOLI, like the U.S. Department of Labor and the courts, use criteria that have been established through court cases to take a close look at the actual realities of the relationship. To determine jurisdiction under wage and hour law, BOLI uses the "economic

reality test" to determine whether there is an employment relationship. Wage and hour law does not apply to independent contractors.

BOLI uses a different test, the "right-to-control test", to determine whether a given worker is an employee or an independent contractor for purposes of civil rights law. Some civil rights statutes protect not only workers, but also job applicants and customers. In those situations, civil rights law applies whether an individual is an independent contractor or employee.

*Economic Reality Test:*

The "economic reality" test consists of the following five factors which gauge the degree of a worker's economic dependency on the business to which he or she is providing services. Generally speaking, the more dependent a worker is on a particular business, the more likely he or she is an employee.

In weighing these factors, it is important to remember that no single factor is determinative for an investigator, administrative law judge or a trial court judge to find that a worker is an independent contractor or an employee. The elements are:

- (1) The degree of control exercised by the alleged employer**
- (2) The extent of the relative investments of the worker and alleged employer**
- (3) The degree to which the worker's opportunity for profit and loss is determined by the alleged employer**
- (4) The skill and initiative required in performing the job**
- (5) The permanency of the relationship**

Although not part of the official test, the following questions may help to illustrate whether a worker is performing work as an employee or an independent contractor:

- (1) The degree of control exercised by the alleged employer
  - Who sets the hours of work?
  - Who is responsible for quality control?



- Does the worker have other customers?
- Who determined the rate of pay? Was it negotiated?
- Who determines how the work gets performed?

(2) The extent of the relative investments of the worker and alleged employer

- Does the worker supply his or her own tools?
- Does the worker purchase materials necessary to do the job?
- Has the worker invested in bonds / insurance / advertising?

(3) The degree to which the worker's opportunity for profit and loss is determined by the alleged employer

- Is the worker free to bring on additional workers to speed up the job? At whose expense?
- Does working or managing the project more efficiently increase profit for the worker?
- Does the worker risk a loss if the job goes awry?

(4) The skill and initiative required in performing the job

- Does the level of skill and initiative required for the job rise to the level demonstrated by an independent business competing in an open market?
- Is a license required to perform the work?

(5) The permanency of the relationship

- How long has the job lasted? Is an ending date contemplated (upon completion of the work)?
- Is the contract (if any) subject to periodic review or automatic renewal?

#### THE LEGAL PRECEDENT....

The current test applied by BOLI was adopted in *In the Matter of Geoffrey Enterprises, Inc.*, 15 BOLI 148 (1996). In that case, the Commissioner adopted the "economic reality" test articulated in *Circle C Investments, Inc.* 998 F.2d 324 (5<sup>th</sup> Cir 1993), a similar case brought by US DOL involving the question of whether certain dancers were employees under the FLSA. In adopting the test, the Commissioner noted that the relevant definitions of "employer" and "employ" in state law were taken from the FLSA and that federal courts have adopted an expansive interpretation of the definition of "employer" under the FLSA in order to effectuate "its broad remedial purposes." As noted by the *Circle* court in its analysis, the focal point of the test is "whether the alleged employee, as a matter of economic reality, is economically dependent upon the business to which she renders her services."

*Right-to-Control Test:*

Under the "right-to-control test," four factors are weighed to determine whether an employer has the "right to control" the work of an individual. Where an employer clearly has the "right to control" the work of an individual under this test, that individual is deemed an employee rather than an independent contractor for purposes of civil rights law.

The factors of the "right-to-control" test are:

- (1) Direct evidence of the right to, or the exercise of, control**
- (2) The method of payment**
- (3) The furnishing of equipment**
- (4) The right to fire**

It is not necessary that all factors coincide to determine whether a given worker is an employee. In such cases, the weight or strength of the factors which are in evidence will be considered.

Although not part of the official test, the following questions may help to illustrate whether a worker is performing work as an employee or an independent contractor:

- (1) Direct evidence of the right to, or the exercise of, control
  - Who sets the hours of work?
  - Who is responsible for quality control?
  - Does the worker have other customers?
  - Who determined the rate of pay? Was it negotiated?
  - Who determines how the work gets performed?
- (2) The method of payment
  - Do clients pay the individual worker directly or do they pay the business employing that worker?
  - Does the worker set the rate of payment or the business employing that worker set the rate?
- (3) The furnishing of equipment
  - Does the worker supply his or her own tools?
  - Does the worker purchase materials necessary to do the job?
  - Has the worker invested in bonds / insurance / advertising?

(4) The right to fire

- How long has the job lasted? Is an ending date contemplated (upon completion of the work)?
- Is the contract (if any) subject to periodic review or automatic renewal?
- Does the contract (if any) provide consequences for termination of the relationship?

**THE LEGAL PRECEDENT....**

In *Cantua v. Creager*, 169 Or.App. 82, 7 P.3d 693 (2000), the Oregon Court of Appeals examined the definitions of an employee and an employer at ORS 659A.001(3) & (4) (formerly ORS 659.010(5) & (6)) and determined that the right-to-control test incorporated in former ORS 659.010 is the common law test for employee status. The court quantified this test by identifying "[f]our factors that are material in determining whether an employer has the right to control an individual: (1) direct evidence of the right to, or the exercise of, control; (2) the method of payment; (3) the furnishing of equipment; and (4) the right to fire."

## 6. Workers Compensation Division (WCD)

For workers' compensation purposes, an independent contractor is an individual or entity that provides a service under a contract without direction and control, or without others having the right to direct and control the provision of those services.

WCD will apply the following tests to determine if a person or entity is an independent contractor:

*Right-to-Control Test:*

- Direct evidence of the right to, or the exercise of, control
- The method of payment (a contractor's pay will relate more to completion of a job)
- The furnishing of equipment
- The right to dismiss (whether either party can terminate the contract, or the person be dismissed at will, or does the person have the authority to hire someone to work alongside?)
- Can the "contractor" accept or refuse a job?
- Was a bid made for the job? Were multiple bids taken by the person seeking to retain a service?
- Can the independent contractor set their own hours within

- the time frame of the general contractor?
- Can they use their own methods to accomplish the intended result?
  - Was the contractor subject to monitoring beyond checking progress?

*The Nature of the Work Test:*

- How much is the work a regular part of the hiring entity's business?
- How skilled is it?
- Is the work continuous or intermittent?
- Is the duration sufficient to amount to the hiring of continuous services as distinguished from contracting for completion of a particular job?
- To what extent may it be expected to carry its own accident burden?

Where it remains unclear whether a given worker meets the definition of an independent contractor under workers' compensation law, WCD encourages businesses to contact their Employer Compliance Unit toll free at 1-888-877-5670 and ask for a Coverage Investigator.

## **7. Best practices for businesses that engage independent contractors**

Engaging an independent contractor can be a smart option for businesses with limited resources in a specific area of expertise. Given the potential consequences of misclassification, however, it is always wise to **document** the criteria you used to determine that a worker meets the legal requirements to be treated as an independent contractor.

The best time to make this evaluation is before you draw up and execute a contract. You may even wish to make it part of the hiring process for bidders to provide you with specific documentation of their independent contractor status. The Bureau of Labor and Industries and the U.S. Department of Labor consider the permanency of the relationship as part of their classification determinations, so you may wish to make sure your contract is subject to periodic review and is not automatically renewed; that way you can use your contract renewal period as an opportunity to re-verify the status of your contractor.

Most importantly, verify and document that the terms of the relationship set out in your contract are borne out by the actual reality between the contractor and yourself. State agencies and the courts have made it clear that it is the reality of a business's relationship with a worker (not its characterization on paper) that controls whether he or she will be considered an independent contractor. While not exhaustive, the following checklist highlights three areas in which you may want to document how a given worker qualifies as an independent contractor.

### *Direction and Control*

To be considered an independent contractor, a worker must be free from your right to direct and control how he or she provides services. Consider the following:

1. Schedule. The independent contractor should be free to establish his or her own hours of work as well as the schedule according to which a project is carried out. As an example, you may wish to provide the contractor with independent access to the worksite.
2. Tools and Materials. It is critical that the independent contractor is not dependent upon your business to provide the tools and materials necessary to complete the work. (Note that there are some exceptions to this rule which allow for greater control over construction and landscape contract specifications.)
3. Personnel. Make it clear (again, by way of the contract) that the independent contractor remains free to bring in other workers as deemed necessary at his or her own expense. Make sure that this is your practice as well as a contractual acknowledgement; do not direct the contractor as to whether or when additional workers need to be brought aboard.
4. Employee policy manual acknowledgement / Performance evaluation. Both of these processes communicate and reinforce your expectations for workplace behavior and are a critically important part of your relationship with your employees. However, an independent contractor is not your employee and as such must remain free from your direction and control when it comes to how work is to be performed. Signing off on your workplace behavior policies establishes an inappropriate measure of direction and

control over an independent contractor.

### *Independently Established Business*

State law makes it clear that *bona fide* independent contractors are in business for themselves. Be sure to document how a given contractor meets at least three of the five requirements of an "independently established business:"

1. Verify that the contractor maintains a separate business location.
2. Structure payment arrangements so as to ensure the contractor bears an appropriate risk of loss as an independent business. Evidence of this risk could include:
  - a. Entering into fixed price contracts;
  - b. Being required to correct defective work;
  - c. Warranting the services provided; or
  - d. Negotiating indemnification agreements or purchasing liability insurance, performance bonds, or errors and omissions insurance.
3. Obtain documentation from the independent contractor such as references from the contractor's other clients, business cards, advertisements to demonstrate that (1) the contractor provides contracted services for multiple clients and (2) routinely engages in business advertising, solicitation or other marketing efforts to obtain new contracts to provide similar services.
4. Verify and document how the contractor has made a significant investment in the business through means such as:
  - a. Purchasing the tools or equipment necessary to provide services;
  - b. Paying for the premises or facilities where the services are provided; or
  - c. Paying for licenses, certificates or specialized training
5. Make sure your contract includes recitals / acknowledgements which make clear the understanding of the contractual relationship and set out responsibility for items such as taxes and Workers Compensation coverage, and the authority and responsibility of the contractor to hire / fire additional workers.



### *Licensure*

If independent contractors are required to maintain licenses or certificates necessary to provide the services, and it is a good idea to verify that any license and bond numbers provided are valid. (Construction Contractors Board and Landscape Contractors Board provide instant verification of licensee information online.)

## **8. Contact Information**

Oregon maintains a website to provide information and resources relating to the issue of worker classification at:

[www.OregonIndependentContractors.com](http://www.OregonIndependentContractors.com)

You may also contact any one of our sponsor agencies for additional information:

Employment Department  
[taxinfo@emp.state.or.us](mailto:taxinfo@emp.state.or.us)

Workers Compensation Division  
[wcd.employerinfo@state.or.us](mailto:wcd.employerinfo@state.or.us)

Construction Contractors Board  
[ccb.info@state.or.us](mailto:ccb.info@state.or.us)

Department of Revenue  
[ic.info.dor@state.or.us](mailto:ic.info.dor@state.or.us)

Bureau of Labor and Industries  
[boli.mail@state.or.us](mailto:boli.mail@state.or.us)

Landscape Contractors Board  
[lcb.info@state.or.us](mailto:lcb.info@state.or.us)

## **9. Appendices**

- a. State Agency Criteria Chart
- b. ORS 670.600
- c. Implementing Regulation

## State Agency Criteria for INDEPENDENT CONTRACTORS

	<b>ORS 670.600</b>	<b>Economic Reality Test</b>	<b>Right-to-Control Test</b>	<b>Nature-of-the-Work Test</b>
<b>Agency</b>	Department of Revenue Employment Department Construction Contractors Board Landscape Contractors Board	Bureau of Labor and Industries - Wage and Hour Division	Bureau of Labor and Industries - Civil Rights Division & Workers' Compensation Division	Workers' Compensation Division (Where Right-to-Control Test proves inconclusive)
<b>Criteria</b>	Worker must meet <b>all</b> of the requirements of ORS 670.600 to be considered an independent contractor.	Five factors of the test are weighed to determine whether worker is an independent contractor as a matter of economic reality. No single factor is determinative.	Four factors of the test are weighed to determine whether a worker is free from the right to control by the business receiving the worker's services. No single factor is determinative.	Considers the character of the work or business, as a supplement to the Right-to-Control test.
<b>Factors</b>	<ol style="list-style-type: none"> <li>Free from direction and control over the means and manner of providing the services, subject only to the right of the person for whom the services are provided to specify the desired result; and</li> <li>Customarily engaged in an independently established business; and</li> <li>Licensed under ORS 671 or 701 (CCB, State Landscape Architect Board or LCB and State Board of Architect Examiners) if required for the service; and</li> <li>Responsible for other licenses or certificates necessary to provide the service.</li> </ol>	<ol style="list-style-type: none"> <li>The degree of control exercised by the alleged employer;</li> <li>The extent of the relative investments of the worker and alleged employer;</li> <li>The degree to which the worker's opportunity for profit and loss is determined by the alleged employer;</li> <li>The skill and initiative required in performing the job;</li> <li>The permanency of the relationship.</li> </ol>	<ol style="list-style-type: none"> <li>Direct evidence of the right to, or the exercise of, control;</li> <li>The method of payment;</li> <li>The furnishing of equipment;</li> <li>The right to fire.</li> </ol>	<ol style="list-style-type: none"> <li>How much is the work a regular part of the hiring entity's business?</li> <li>How skilled is it?</li> <li>Is the work continuous or intermittent?</li> <li>Is the duration sufficient to amount to the hiring of continuous services as distinguished from contracting for completion of a particular job?</li> <li>To what extent may it be expected to carry its own accident burden?</li> </ol>
<b>Notes</b>	<p><b>The classification of a worker under any of these tests is not determinative for the classification of that worker under the remaining tests.</b></p> <p>The text of ORS 670.600 as well as additional information regarding the criteria listed above is available at: <a href="http://www.oregonindependentcontractors.com">www.oregonindependentcontractors.com</a>.</p>			

**Disclaimer:**

The above information is provided as a summary and teaching guide and is not intended as legal advice. If you need legal advice, please consult an attorney. We attempt to update materials pertaining to the information laid out above as soon as practicable following changes or developments in the laws and rules affecting Oregon employers, but we make no warranties or representations, express or implied, about whether the information provided is current. We urge you to check the applicable statutes and administrative rules yourself and to consult with legal counsel prior to taking action that may invoke employee rights or employer responsibilities or omitting to act when required by law to act.

**Oregon Revised Statute (ORS) 670.600**

**INDEPENDENT CONTRACTORS**

**670.600 Independent contractor defined.** (1) As used in this section:

- (a) "Individual" means a natural person.
- (b) "Person" has the meaning given that term in ORS 174.100.
- (c) "Services" means labor or services.

(2) As used in ORS chapters 316, 656, 657, 671 and 701, "independent contractor" means a person who provides services for remuneration and who, in the provision of the services:

(a) Is free from direction and control over the means and manner of providing the services, subject only to the right of the person for whom the services are provided to specify the desired results;

(b) Except as provided in subsection (4) of this section, is customarily engaged in an independently established business;

(c) Is licensed under ORS chapter 671 or 701 if the person provides services for which a license is required under ORS chapter 671 or 701; and

(d) Is responsible for obtaining other licenses or certificates necessary to provide the services.

(3) For purposes of subsection (2)(b) of this section, a person is considered to be customarily engaged in an independently established business if any three of the following requirements are met:

(a) The person maintains a business location:

- (A) That is separate from the business or work location of the person for whom the services are provided; or
- (B) That is in a portion of the person's residence and that portion is used primarily for the business.

(b) The person bears the risk of loss related to the business or the provision of services as shown by factors such as:

- (A) The person enters into fixed-price contracts;
- (B) The person is required to correct defective work;
- (C) The person warrants the services provided; or

(D) The person negotiates indemnification agreements or purchases liability insurance, performance bonds or errors and omissions insurance.

(c) The person provides contracted services for two or more different persons within a 12-month period, or the person routinely engages in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.

(d) The person makes a significant investment in the business, through means such as:

- (A) Purchasing tools or equipment necessary to provide the services;
- (B) Paying for the premises or facilities where the services are provided; or
- (C) Paying for licenses, certificates or specialized training required to provide the services.

(e) The person has the authority to hire other persons to provide or to assist in providing the services and has the authority to fire those persons.

(4) Subsection (2)(b) of this section does not apply if the person files a Schedule F as part of an income tax return and the person provides farm labor or farm services that are reportable on Schedule C of an income tax return.

(5) For purposes of determining whether an individual provides services as an independent contractor:

(a) The creation or use of a business entity, such as a corporation or a limited liability company, by an individual for the purpose of providing services does not, by itself, establish that the individual provides services as an independent contractor.

(b) When the individual provides services through a business entity, such as a corporation or a limited liability company, the provisions in subsection (2), (3) or (4) of this section may be satisfied by the individual or the business entity.

### **Oregon Administrative Rule: Independent Contractor**

(1) Purpose of Rule. The Landscape Contractors Board, Department of Revenue, Department of Consumer and Business Services, Employment Department, and Construction Contractors Board must adopt rules together to carry out ORS 670.600. 670.600 defines "independent contractor" for purposes of the programs administered by these agencies. This rule is intended to ensure that all five agencies apply and interpret ORS 670.600 in a consistent manner; to clarify the meaning of terms used in ORS 670.600; and, to the extent possible, to enable interested persons to understand how all five agencies will apply ORS 670.600.

#### (2) Statutory Context.

(a) ORS 670.600 generally establishes three requirements for "independent contractors." One requirement is that an "independent contractor" must be engaged in an "independently established business." Another requirement is related to licenses and certificates that are required for an "independent contractor" to provide services. A third requirement is that an "independent contractor" must be "free from direction and control over the means and manner" of providing services to others.

(b) The specific focus of this rule is the "direction and control" requirement. See ORS 670.600 for the requirements of the "independently established business" test and for licensing and certification requirements.

#### (3) Direction and Control Test.

(a) ORS 670.600 states that an "independent contractor" must be "free from direction and control over the means and manner" of providing services to others. The agencies that have adopted this rule will use the following definitions in their interpretation and application of the "direction and control" test:

(A) "Means" are resources used or needed in performing services. To be free from direction and control over the means of providing services an independent contractor must determine which resources to use in order to perform the work, and how to use those resources. Depending upon the nature of the business, examples of the "means" used in performing services include such things as tools or equipment, labor, devices, plans, materials, licenses, property, work location, and assets, among other things.

(B) "Manner" is the method by which services are performed. To be free from direction and control over the manner of providing services an independent contractor must determine how to perform the work. Depending upon the nature of the

business, examples of the "manner" by which services are performed include such things as work schedules, and work processes and procedures, among other things.

(C) "Free from direction and control" means that the independent contractor is free from the right of another person to control the means or manner by which the independent contractor provides services. If the person for whom services are provided has the right to control the means or manner of providing the services, it does not matter whether that person actually exercises the right of control.

(b) Right to specify results to be achieved. Specifying the final desired results of the contractor's services does not constitute direction and control over the means or manner of providing those services.

(4) Application of "direction and control" test in construction and landscape industries:

(a) The provisions of this section apply to:

(A) Architects licensed under ORS 671.010 to 671.220;

(B) Landscape architects licensed under ORS 671.310 to 671.479;

(C) Landscaping businesses licensed under ORS 671.510 to 671.710;

(D) Engineers licensed under ORS 672.002 to 672.325; and

(E) Construction contractors licensed under ORS chapter 701.

(b) A licensee described in (6)(a), that is paying for the services of a subcontractor in connection with a construction or landscape project, will not be considered to be exercising direction or control over the means or manner by which the subcontractor is performing work when the following circumstances apply:

(A) The licensee specifies the desired results of the subcontractor's services by providing plans, drawings, or specifications that are necessary for the project to be completed.

(B) The licensee specifies the desired results of the subcontractor's services by specifying the materials, appliances or plants by type, size, color, quality, manufacturer, grower, or price, which materials, appliances or plants are necessary for the project to be completed.

(C) When specified by the licensee's customer or in a general contract, plans, or drawings and in order to specify the desired results of the subcontractor's services, the licensee provides materials, appliances, or plants, including, but not limited to, roofing materials, framing materials, finishing materials, stoves, ovens, refrigerators, dishwashers, air conditioning units, heating units, sod and seed for lawns, shrubs, vines, trees, or nursery stock, which are to be installed by subcontractors in the performance of their work, and which are necessary for the project to be completed.

(D) The licensee provides, but does not require the use of, equipment (such as scaffolding or fork lifts) at the job site, which equipment is available for use on that job site only, by all or a significant number of subcontractors requiring such equipment.

(E) The licensee has the right to determine, or does determine, in what sequence subcontractors will perform work on a project, the total amount of time available for performing the work, or the start or end dates for subcontractors working on a project.

(F) The licensee reserves the right to change, or does change, in what sequence subcontractors will perform work on a project, the total amount of time available for performing the work, or the start or end dates for subcontractors working on a project.

Stat. Auth: ORS 657.610

Stats. Implemented: ORS 657.040, 670.600, 670.605, 671.010 - 657.710, 672.002 - 672.325,701

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