

Employee Misclassification

Compliance and Impacts

Volunteers and Interns

- ▶ **Volunteers:** Can only volunteer for 501(c)(3) non-profit, and there can be no expectation of compensation
- ▶ **Internships:** Usually associated with education for the worker and must impact the business providing the training

ORS 657.030

- ▶ Employment means service for an employer performed for remuneration
- ▶ Exceptions under 657.035, 040, and 043–094.

ORS 670.600

- ▶ Defines “Independent contractor” as “a person who provides services for remuneration and...”

Independent Contractor defined:

- ▶ Is free from direction and control
- ▶ Is licensed to perform the work if a license is required
- ▶ Is customarily engaged in an independent business

Direction and Control

- ▶ OAR 471-031-0181
 - Defines the “means” and “manner” as resources and method, respectively
 - “Free from direction and control” means that an independent contractor is free from another person controlling the means and manner of the services provided
 - Specifying desired results does not establish control

What licenses are required?

- ▶ Licensing under ORS 671 applies to:
 - Architects and Landscape architects
- ▶ Licensing under ORS 701 applies to:
 - Construction contractors
 - Home inspectors
 - Locksmiths
- ▶ Visit www.oregon.gov/business for licensing info

What's a business?

- ▶ An Independently Established Business meets 3 of the following criteria:
 - Maintains a business location
 - Bears the risk of loss
 - Has multiple customers or engages in advertising their business
 - Makes a significant investment in the business
 - Can hire or fire other individuals

Maintaining a business location

- ▶ Separate from the location of the provided services

OR

- ▶ In a portion of the worker's residence which is used primarily for the business

Bears the risk of loss

- ▶ Includes, but is not limited to:
 - Enters into fixed-price contracts
 - Must correct defective work
 - Warrants the services provided
 - Negotiates indemnification agreements
 - Purchases liability or other types of insurance

Multiple customers / advertising

- ▶ Two or more different persons within a 12 month period

OR

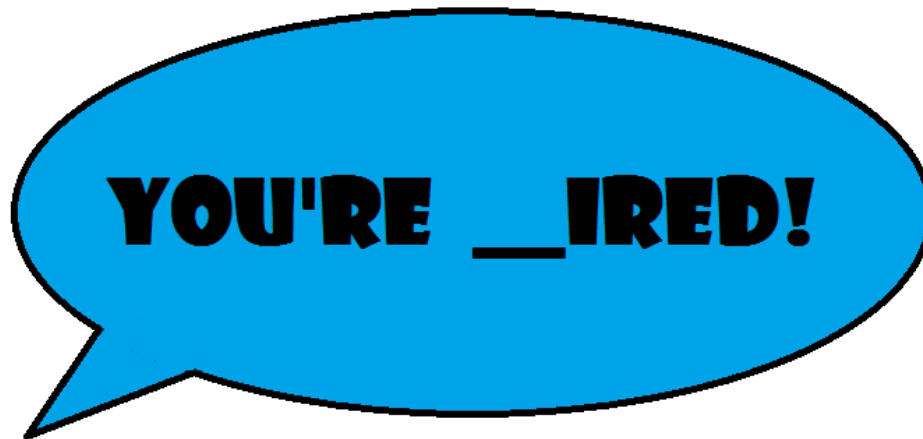
- ▶ Advertising, solicitation, or other marketing efforts to obtain new contracts for similar services

Makes a significant investment

- ▶ Purchasing tools or equipment needed to provide services
- ▶ Paying for the facilities where services are provided
- ▶ Paying for licenses, certificates or training required to provide the services

Can hire or fire

- ▶ Has the authority to hire other individuals to assist with the work
- ▶ Can also fire those individuals at their own discretion



Recap

1. Direction and control
 2. Licensed or responsible for obtaining license
 3. Independent Business
 - (3 out of 5)
 - A. Their own business location
 - B. Bears risk of loss
 - C. Provides services for two or more customers within 12 month period or conducts reasonable marketing efforts
 - D. Makes a Significant investment
 - E. Authority to Hire/Fire
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- ▶ Simply creating a business entity is not enough.
 - ▶ Can provide services through a business entity.

ORS 657.048

- ▶ “Employment does not include services performed by language translators or interpreters that are provided for others through an agent or broker.”

Creating a Level Playing Field

- ▶ Worker misclassification contributes to:
 - Underfunded worker benefits
 - Tax avoidance
 - Unfair wage practices
 - Puts businesses and individuals who obey the law at a disadvantage
 - Increases tax rates for compliant businesses
- ▶ Provides protection to those covered by employment laws

2015 Results: Statewide

- ▶ 1,330 audits completed
- ▶ \$1,045,715,885 in Payroll audited
- ▶ 3,707 misclassified workers
- ▶ Taxable Payroll misreported: \$41,925,780
- ▶ Total UI Tax misreported: \$1,282,265
- ▶ 577 businesses misclassified workers

Population Centers: 2014

City	Number of Misclassified Workers	Gross Payroll Audited Amount	Taxable Payroll Under-reported	Tax Under-reported
PORTLAND	631	\$158,189,009	\$3,110,145	\$96,718
SALEM	144	\$60,182,124	\$1,954,934	\$49,490
EUGENE	427	\$113,139,092	\$2,402,041	\$65,127
BEND	126	\$29,058,190	\$905,243	\$27,260
MEDFORD	120	\$31,414,728	\$1,061,454	\$31,887
Grand Total	1,448	\$391,983,143	\$9,433,817	\$270,482

Available Resources

- ▶ Interagency Compliance Network (ICN)
 - OED, DOR, DCBS, BOLI, CCB, LCB, and DOJ
- ▶ www.oregon.gov/IC
- ▶ www.oregonindependentcontractors.com
- ▶ www.oregon.gov/business
- ▶ Employment Department: 503-947-1542
- ▶ Department of Revenue: 971-301-1805
- ▶ Employment Department: 503-947-1544 x 6

Thank You!

