SEYFARTH SHAW

Management Alert

A Standardized Test Is Here: Connecticut Supreme Court Brings Clarity to the "ABC" Test for Independent Contractor Status

By Meredith-Anne Berger, Lynn Kappelman, and William P. Perkins

Today, a key decision for Connecticut employers came down from Connecticut's highest court. In *Standard Oil of Connecticut, Inc. v. Administrator, Unemployment Compensation Act*, SC 19493 (March 15, 2015), the Connecticut Supreme Court expanded the applicability of independent contractor status under the "ABC test," which forms the framework of worker classification analysis in Connecticut for the purposes of unemployment tax liability.[1]

Notably, the court held that employers should be subject to a single standard for purposes of state unemployment compensation and the obligation to pay federal unemployment tax. In analyzing part B, which predominately focuses on services performed outside the place or course of business, "a reviewing court should consider the extent to which the employer exercised control over the location where the independent contractor worked."[2] The purported employees visited customers' homes to install and service home heating and alarm systems and deliver heating oil.

The court agreed with the plaintiff's argument that an unreasonably broad interpretation of prong B "would have the practical effect of preventing the plaintiff or any other Connecticut business from ever utilizing the services of an independent contractor."[3] The court also found that although certain limitations were placed on technicians, they were free from the direction and control of the purported employer. The decision includes a thorough analysis of the current law on prongs A and B of the test.[4]

---

1 The ABC test, as it is commonly known, is contained in several Connecticut statutes, including § 31-222 of the unemployment compensation law, and is comprised of the following factors:

A. such individual has been and will continue to be free from control and direction in connection with the performance of such service, both under his contract for the performance of service and in fact; and
B. such service is performed either outside the usual course of the business for which the service is performed or is performed outside of all the places of business of the enterprise for which the service is performed; and
C. such individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.

2 *Standard Oil of Conn. v. Adm'r., Unemployment Compensation Bd.*, at *21.
3 *Id.* at *16.
4 While the court did not address part C, the decision noted that many technicians did in fact have separate businesses from which they earned income.

Prong A: Free from Direction and Control

The court found the company did not have the right to direct and control the purported employees. Prong A of the test provides that an employment relationship exists *unless* the individual "has been and will continue to be free from control and direction in connection with the performance of such service, both under his contract for the performance of service and in fact…" The court noted that the Connecticut unemployment board has historically applied a fact-specific analysis to Prong A. In the case of Standard Oil, the factors which tipped the scales in favor of independent contractor status included: the purported employees performed work at customers' homes and were monitored not by the company but by the customer; used their own materials, transportation, and insurance; were permitted to hire assistants; would realize a profit or loss on the work completed, and were free to accept or reject any assigned job. The court emphasized the *right* to exercise control, as opposed to actual interference. Although the reversal with regard to prong A is not revolutionary, the decision is destined to become guiding precedent in future cases involving independent contractors, and is a coup for employers.

Prong B: Outside the Usual Course or Places of Business of Employer

In part, with its analysis under B, the court sought to "harmonize" the definitions contained in the state statutes that govern state unemployment determinations and federal unemployment tax. Prong B of the test is the question of whether the service is performed outside the enterprise's usual course of business or outside the enterprise's places of business. The Connecticut Standard Oil workers were not performing services outside the company's usual course of business, but were performing services, namely the installation and service of heating systems, alarms, and the delivery of home heating oil, at customers' homes. The fact that the technicians signed independent contractor agreements was also given some consideration, although such an agreement is not controlling.

The court draws a bright line rule, holding that customers' homes are not "places of business," under part B of the test, citing conformance with applicable statutes as well as the sanctity of the home under Connecticut law. This ruling is significant for employers in many industries that provide services in households throughout the state of Connecticut. The court recognized that Prong B was often given more weight than the other two parts of the test, rendering it the sole factor in the decision: "no one part of the test should be construed so broadly—and, therefore, made so difficult or impossible to meet—that the other two parts of the test are rendered superfluous."[5] Noting that employers have a choice between two alternatives to satisfy part B—the work is completed either outside the ordinary course or place of business, the court held "adopting a broad interpretation of part B would deprive employers of that choice and, in some cases, could make the exemption provided under the ABC test meaningless by increasing this already heavy burden."[6] While the ruling provides a clear answer with respect to whether customers' homes are considered "places of business" under the statute, the court declined to make a broad ruling defining "places of business" because of "certain undesirable, practical consequences that might follow," including double taxation of entities involving independent contractors.

Implications for Employers

In recognizing the uncertainty that accompanies a determination of employee/independent contractor status, the court undertook a comprehensive review of the appellate decisions from all over the country on both prongs of the test. The decision clarifies the state of the law, at least with respect to a subset of workers that applies to a broad swath of industries, and allows employers to make an informed decision about the status of its workers that perform services within customers' homes.

---

5 *Standard Oil of Conn. v. Adm'r., Unemployment Compensation Bd.,* at *21.
6 *Id.*

Employers should consider reevaluating the classification of their employees and independent contractors in light of this decision. While the ruling does not extend to each and every classification decision due to the inherent fact-based analyses in these cases, those with workers who perform services in customers' homes may want to revisit their classification policies in the wake of this decision relating to independent contractor status for purposes of unemployment insurance. However, outside the unemployment insurance context, different tests are used and classification decisions should be evaluated under all applicable legal frameworks.

If you would like further information, please contact your Seyfarth attorney, or Meredith-Anne Berger at mkurz@seyfarth.com, Lynn Kappelman at lkappelman@seyfarth.com, or William P. Perkins at wperkins@seyfarth.com.

www.seyfarth.com