

CONTRACTS FOR REVIEW:

**Some were written to renew automatically every June. Some have been expired for years.
Some are paid hourly. Some are paid lump-sum.**

City Attorney

City Auditor

City Planner

Code Enforcement Officer

Caretaker (LLC&M)
 (The Commons/501/Picnic Shelter)

Custodian (The Commons & 501)
 (Library & City Hall)

Friends of the Commons (User Support Coordinator)

IT (Local Network)
 (City site)

Mowing

Visitors Center

2015 ORS 670.600¹

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 (Definitions).
 - (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 Independent Contractors (/ic/Pages/index.aspx) / Independent Contractors (/ic/independent/Pages/default.aspx) / Employee or Independent Contractor?

Employee or Independent Contractor?

Who is an Independent Contractor and Who is an Employee?

A worker who provides services for remuneration generally will be considered an employee by the courts and state regulatory agencies, unless that worker meets the criteria required of an “independent contractor” (or other exception) with the emphasis falling on the word “independent.”

In making classification determinations, the courts and regulatory agencies weigh certain facts to determine:

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

While not all agencies utilize the same criteria, you can find the specific tests for each agency on this website under our **Rules/Statute (/ic/Compliance-and-the-law/Pages/laws.aspx)** link.

The definition of an “independent contractor” for the Department of Revenue, the Employment Department, the Construction Contractors Board and the Landscape Contractors Board is found at ORS 670.600. These agencies require that the worker meet **all** the criteria of ORS 670.600, in order to be considered an independent contractor.

Note that different criteria are utilized by the Bureau of Labor and Industries (**BOLI (/BOLI/TA/pages/T_FAQ_Independent_Contractors_11-2010.aspx)**) and the Department of Consumer and Business Services' **Workers Compensation Division (<http://www.cbs.state.or.us/external/wcd/compliance/indcon.html>)**.

As you review the tests, you should also note that there are a number of considerations which are not determinative in deciding whether a worker is an independent contractor:


1. 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.
2. A contract in which the worker is assigned the label of “independent contractor.”

3. Payment to the worker is reported by way of a Form 1099 rather than a Form W2.

Still have questions? **Contact us (</ic/Support-and-Resources/Pages/Contact.aspx>)!**

Disclaimer:

The above information is provided as a summary and teaching guide. Nothing on this website is intended as legal advice. If you need legal advice, please consult an attorney. We attempt to update the information on this website 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.

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Oregon Independent Contractors (</ic/Pages/index.aspx>) / Compliance and the Law (</ic/Compliance-and-the-law/Pages/default.aspx>) / Statutes and Rules

Statutes and Rules

Oregon's Independent Contractor Laws

A worker providing services for pay is generally considered an employee by Oregon regulatory agencies - unless that worker meets the requirements for an independent contractor.

Oregon Revised Statute (ORS) **670.600 (/ic/Documents/ors_670.600_2010_12_17.pdf)** (summarized below) defines the term “independent contractor” for the following state agencies:

- Department of Revenue
- Employment Department
- Construction Contractors Board
- Landscape Contractors Boards

Be aware, however, that different criteria are utilized by the **Bureau of Labor and Industries (/BOLI/TA/pages/T_FAQ_Independent_Contractors_11-2010.aspx)** and the Department of Consumer and Business Services' **Workers Compensation Division (<http://www.cbs.state.or.us/external/wcd/compliance/indcon.html>)**.

A summary of the criteria used by each of these state agencies is available in **chart form (</ic/Documents/State%20Agency%20Criteria%20TABLE.pdf>)** .

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**

(/ic/Documents/ors_670.600_2010_12_17.pdf) and its implementing regulations (**OAR 471-031-0181**) (**/ic/Documents/oar_2010_12_17.pdf**) .

Reminder:

ORS 670.600 applies only to the Oregon Department of Revenue, Employment Department, Construction Contractors Board, and Landscape Contractors Board. These agencies require that the person performing the work meet all the criteria of that law to be considered an independent contractor.

For information about this topic under workers' compensation and Oregon labor laws, please contact the **Workers' Compensation Division**

(<http://www.cbs.state.or.us/external/wcd/compliance/indcon.html>) and **Bureau of Labor and Industries (/BOLI/TA/pages/T_FAQ_Independent_Contractors_11-2010.aspx)**. These agencies, along with the IRS, use a different method for determining whether a worker is subject to employment laws. A summary of the tests used by BOLI and Workers' Compensation can be found on this chart.

Exception to Employment:

There are many exceptions to what is considered “employment” in the law when it comes to Unemployment Insurance. Details of these statutory exceptions can be found in ORS 657.030, 657.040, and 657.043 through 094. Please note that if you are unsure whether someone performing a service is subject to employment law, contact us with your questions.

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Technical Assistance for Employers

Department	Independent Contractors
About Us	The protections and obligations of employment laws generally extend to "employees" but not "independent contractors." While it is tempting to try to avoid the costs and responsibilities associated with employees by calling them "independent contractors," the courts and agencies that enforce employment laws do not rely on the label "independent contractor."
Contact Us	
Employer Seminars	
On-site Training	The Bureau of Labor and Industries (BOLI), like the U.S. Department of Labor and the courts, use criteria that have been established through previous court cases to take a close look at the actual realities of the relationship. For purposes of wage and hour law, BOLI uses the " economic reality test " to determine whether there is an employment relationship.
Employer Handbooks & Posters	BOLI utilizes 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, it would not matter whether an individual is an independent contractor or employee.
FAQ's and Fact Sheets	
Administrative Rules	
Oregon Revised Statutes	It is also important to remember that other state agencies will make their own determination on whether a worker is an independent contractor or an employee. For example, ORS 670.600 is an Oregon statute that defines an "independent contractor" for the Department of Revenue, Employment Department, Construction Contractors Board and Landscape Construction Board. These agencies require that the person performing the work meet all the criteria of that law in order to be considered an independent contractor.
Government Agency Contact List	
Related Links	
Back to BOLI Home Page	You can visit www.oregonindependentcontractors.com for more information about the independent contractor classification criteria applied by other state agencies.

FAQs

Q: So what is an independent contractor, really?

A: To cut to the chase, the tests applied by the courts and regulatory agencies exist to gauge whether a worker who provides services is operating an independent business. They do this primarily by weighing facts to determine (1) whether the worker is free from direction and control and/or (2) whether the worker is, as a matter of economic reality, independent of the business to which services are being provided.

Q: What happens when an employee is misclassified as an independent contractor?

A: There are several potentially expensive costs to misclassifying an employee. Often, state agencies are required by law to assess back taxes, penalties, and interest in cases of misclassification. Employees who were not properly paid wages may also seek back wages, penalty wages and interest through BOLI or the courts. Additional civil penalties may be assessed if minimum wage and overtime claims are involved.

Q: How can I be sure my independent contractors won't be classified as employees?

A: Generally, the courts and regulatory agencies will consider workers to be employees unless they meet the definition of an independent contractor. It is critical, therefore, that you compare the reality of your relationship to an independent contractor with the various tests for an independent contractor. BOLI's tests as well as the criteria of ORS 670.600 are available by way of the links listed above. The IRS also has [classification criteria](#) available online.

Q: Does it make a difference if I have a contract and report income under a Form 1099?

A: The determination will depend on a consideration of the facts of the entire relationship, not a title. A contract, even if it correctly captures the intent of the parties involved, will not suffice if the facts of the matter do not show that the worker in question satisfied the legal criteria required of an independent contractor.

Q: One of my employees has a side business. Can I have him provide services as an independent contractor so long as the duties he performs as an employee are different?

A: Not according to the U.S. Department of Labor. In an opinion letter dated July 5, 2000, DOL was asked whether an employee who worked as a graphic designer could also perform work as an independent contractor for the same employer. Although the duties performed by the employee in each capacity would be distinct, DOL opined that the worker would be an employee and not an independent contractor in regard to all work performed. DOL also stated that, "It has long been the position of the Wage and Hour Division that it is unrealistic to assume that an employment and "independent contractor relationship" may exist concurrently between the same parties in the same workweek."

Q: I want to hire someone to remodel my house. Can I safely assume that this person will be an independent contractor and not an employee?

A: Not necessarily. Although construction is an industry that often uses the work of independent contractors, this is not always so. A recent BOLI case illustrates that if enough of the factors of the "economic reality" test are met, an employment relationship may exist. See [In the Matter of Laura M. Jaap](#), (April 8, 2009) Case No. 32-08, where the Commissioner found that the Respondent exercised significant control, provided tools and materials, and there was an aspect of permanency to the relationship.

This page updated on November 1, 2013.

DISCLAIMER

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