



Bad Week For Gig Businesses In Oregon

Insights

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Last week was a bad week for gig economy companies in Oregon. It wasn't just the post-holiday malaise that so many suffer from after having to return to work following a long, relaxing weekend that probably included eating too much turkey. Instead, it was two legal developments—an announced multi-million dollar settlement and an administrative ruling in favor of workers—that made the final week of November a particularly troubling one when it comes to misclassification issues. While neither matter directly emanated from a gig economy itself, the resolution of each case will impact any entity using independent contractors as part of its workforce.

The bad news started on Monday when the Oregon Bureau of Labor and Industries (BOLI) determined that two talk radio show hosts who worked for the Pamplin Media Group had been incorrectly classified as independent contractors and were entitled to \$55,000 in penalties and back wages. According to [the agency's November 26 order](#), former radio hosts Carl Wolfson and Margie Boule were wrongly classified and should have been treated as employees for compensation purposes. BOLI applied the very common ["economic realities" test](#) to determine worker status, as is proper under an analysis of Oregon's minimum wage laws, and found the majority of the factors weighed heavily in favor of employee status. Among the factors that weighed in the workers' favor:

- The workers' rate of pay was not negotiable;
- The radio station's producer worked collaboratively with the workers to suggest show content and guests;
- The station developed a schedule dictating what type of content should fill each minute of the radio show;
- The workers were required to attend staff meetings; and
- The radio station provided the workers with cubicles, desks, business cards, computers, printers, telephones, offices supplies, and studio equipment.

And the hits just kept coming with the Thursday announcement that the U.S. Department of Labor (USDOL) had reached a \$3.2 million settlement with a Portland-based courier service. According to the [USDOL's November 29 press release](#), three related companies agreed to pay \$3,087,100 in wages and liquidated damages for violations of the Fair Labor Standards Act (FLSA), and an additional \$112,900 in civil money penalties. The trouble started in December 2016 when the USDOL filed suit against Senvoy LLC, and two affiliated courier companies alleging they systemically denied

minimum wage and overtime pay to couriers driving under the Senvoy name since at least 2010. As the USDOL put it, “the violations arose from Senvoy LLC’s practice of classifying its couriers as independent contractors, rather than as employees. As a result, Senvoy LLC failed to pay its couriers for all hours worked and charged the couriers a host of expenses, including the cost of gas and other costs attendant to using the drivers’ vehicles for Senvoy LLC’s delivery work.” After several years of litigation, the entities agreed to a settlement to resolve the dispute which will require the defendants to classify all drivers as employees. The settlement also requires Senvoy to submit to a third-party audit of their employment practices within six months.

These cases are just further examples of the risky world that gig companies live in when it comes to misclassification. Any entity operating in Oregon (or anywhere, for that matter) should have legal counsel review their independent contractor arrangements to ensure compliance.

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