2016 SIGNIFICANT NEW CASES:

"Res Juda What?"

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Standard Oil of Connecticut, Inc. v., Administrator, Unemployment Compensation Act, 134 A.3d 581, 320 Conn 611 (2016) (Ct. Supreme Court)

Employer appealed finding by appeals referee that certain installers who performed services related to employer's business were employees and the resulting tax assessment. Employer was unsuccessful appealing to both the CT Board and Superior Court. Employer then appealed to the CT Supreme Court which reversed and directed judgement that the installers were not employees. Dissent by Chief Judge joined by two other judges.

“A” Test - control

Standard Oil is largely engaged in the business of selling and delivering home heating oil. Approximately 10% of its business involves the sale and installation of hearing/air conditioning systems and alarm systems. Standard advertises installed system, schedules installation with homeowner buyers and then engages an outside installer who is available for the scheduled date/time.

All installers are individually licensed, run their own businesses or are self employed, all had the ability to choose what installation job to accept, payment is a set fee, installers are not allowed to subcontract, but may engage assistants at their own expense. Installers provide their own trucks/transportation, tools, insurance, and are not required to wear a company uniform. All installers sign contracts agreeing to exercise their "best independent judgement" in performing services. All services are performed in individual buyers' homes and Standard does not oversee installation work or inspect it.

After a very lengthy review of CT case law and a detailed analysis of the "A test", the Court concluded that due to the factors cited above, both the agency and lower court had incorrectly decided the control issue and reversed.

“B” Test

Reviewing the “B” part of the test, the Court accepted Standard’s argument that the agency/lower court’s interpretation of “place of business” to include the homes of residential customers was unreasonably broad and would essentially preclude the hiring of independent contractors by any business.

The Court noted the paucity of legislative history on this particular statute and went on to observe that another CT statute used similar language and that the statutes should be construed harmoniously if at all possible.

After again reviewing ABC precedents, it was concluded that there should be two principles governing part B construction:

1. **Harmonious construction of related statutes**
2. **No one part of a conjunctive test should be construed so broadly that it renders the other parts superfluous.**

The Court concluded that "place of business" should not be extended to private homes where Standard did not exercise either presence or supervision since it was the homeowner who (1) controlled access/schedule, (2) brought the installers into their property and (3) identified problems during warranty period.

The Court also specifically rejected the "remedial " purpose of the statute argument, suggesting that it did not override the fact that the ABC test does provide a reason to wholly override the legislature's intent of exempting employers in certain circumstances.

There is a lengthy dissent, focused largely on the "B" part of the test and remedial purpose of the law. Review of and analysis of numerous cases.

E.Z. Movers, Inc. v. Jay Rowell, Administrator and The Department of Employment Security, ____ NE ____ (August 2016) 2016 Il. App (1st) 150435

- **Blocked claim led to audit Employer assessed over $25,000 in contributions for unreported wages for drivers and helpers who had been classified as independent contractors. EZ lost at the agency level, but won on appeal to circuit court. Agency appealed to Court of Appeals which reversed and affirmed the agency's decision.**

- **EZ treated its drivers and trained helpers as independent contractors and untrained helpers as employees. EZ asserted that under the A part of the IL ABC test it did not exercise sufficient control for the drivers and helpers to be employees. They could work for other movers or themselves, had to buy their own tools, and provide their own insurance, and bore the risk of loss if they damaged an EZ van, and could refuse jobs for any reason. However,**

It was not disputed that EZ owned all the vans and vans could only be used for EZ moves.

- **The IL code contains a 25 factor test for direction and control. EZ attacked the weight given by the agency to certain factors and not others by the agency. The court held that it did not reweigh evidence on review and noted approvingly that the Director had found that EZ had the right to hire and fire, owned the most important tool – the trucks, drivers and helpers could not assign their tasks to other without EZ approval and that EZ scheduled the jobs.**

- **The Court went further and reviewed the "B" and "C" tests though it was not necessary to affirm the agency. As to "B", the Court rejected EZ's argument that it was a marketing entity and the drivers and helpers were the physical side of the moving. The Court held no error since**

a moving company *would not exist* without workers to physically move items.

- **"C" The Director found and the Court approved that EZ did not show that its drivers and could have operated a business without its involvement, it owned the trucks, set prices, schedules and paid the drivers.**

Very current case applying the ABC test, short opinion worth reading just to check the 25 factor list, and the judicial rejection of splitting up the business may be useful in "gig economy" cases.

Petrovic v. The Department of Employment Security, 51 N.E. 3d 726 (Il. 2016) 2016 Il. 118562

- **Claimant discharged and benefit claim denied due to misconduct. Penalty affirmed by Board. Circuit Court reversed finding claimant eligible. Appeals court reversed. Il. Supreme Court found for claimant.**

- **Claimant was an airline employee who sought to provide champagne and a seat upgrade for a passenger due to a request from a friend employed at another airline. Claimant did not have the authority to grant the request, but asked those who did to grant it and it was granted. Claimant was discharged for granting request, airline asserted that it lost $7,100 due to the upgrade.**

- **Employer's evidence was murky on what employer rules were involved and claimant's knowledge of them and the Court concluded that there was not misconduct under the Il. Misconduct statue.**

- **Of general interest- the Court discusses a number of standards of review, citing numerous cases.**

- **The Court rejected plaintiff's attempt to exclude the agency from the appeal because it was an adjudicatory body and could not be an advocate in the absence of the airline. The Court found that because the agency must administer the law and preserve the trust fund it had an independent interest in maintaining a uniform body of law concerning the UI Act and the fund it had standing to seek apellate review of adverse decisions.**

- **The Court also cited a number of "common sense" misconduct cases not involving a specific rule or policy including one in which misconduct was found when a claimant told a supervisor to "kiss my grits."**

- **The Court ultimately held that absent an express rule or policy a misconduct penalty could only imposed if the discharge was for an illegal act or intentional tort.**

- **The Illinois legislature has enacted legislation effective this year that adds a number of misconduct situations which will apply irrespective of the misconduct definition in this case.**