

# Connecticut Supreme Court Issues Important Clarification For Independent Contractor Test

Article By:

Guy Brenner

Carolyn M. Dellatore

---

On March 21, 2017, the **Connecticut Supreme Court** issued an important ruling, finding that an individual may be still considered an independent contractor under the state's **Unemployment Insurance Act** even if he/she only provides services to one business or entity. In so doing, the Connecticut Supreme Court reversed a decision by the Unemployment Insurance Board finding certain workers to be employees simply because the putative employer could not show that they performed work for other companies.

## ***Procedural Background***

In [\*Southwest Appraisal Group, LLC v. Administrator, Unemployment Compensation Act\*](#), the Plaintiff-Appellant, Southwest Appraisal Group, LLC ("Southwest") operated an automotive appraisal company and exclusively utilized independent contractors as its appraisers. The Connecticut Unemployment Insurance Administrator audited Southwest in 2011 and determined that certain of the contractors were in fact employees. The Administrator assessed back taxes against Southwest, who appealed the assessment to the Unemployment Insurance Board. The Board affirmed the Administrator's assessment with regard to three individuals. Southwest appealed the decision to the Connecticut Superior Court.

## ***The ABC Test and the Trial Court's Decision***

In determining whether a worker is an employee or independent contractor for purposes of the Connecticut Unemployment Insurance Act, courts apply a three-prong "ABC test" which examines the following factors in order to determine independent contractor status:

- the worker is free from direction and control of the employer;
- the services the worker provides are outside the employer's usual course and/or place of business; and
- the worker is customarily engaged in an independently established business of the same

In order to be deemed an independent contractor, all three prongs of the ABC test must be met.

The trial court in *Southwest* determined that, while the appraisers satisfied the first two prongs of the ABC test, they were not “customarily engaged in an independently established business” because they only provided appraisal services for Southwest. While the appraisers were all free to contract with other entities and owned their own appraisal businesses (with independently-maintained offices, equipment, and business cards) the trial court found that “there is no indication on this record that any of these three businesses would survive without their relationship with the plaintiff.” According to the lower court, this economic dependency was dispositive to the analysis, as termination of the relationship with Southwest would “result in the unemployment of the putative employees.”

Southwest appealed the decision to the Connecticut Supreme Court. The sole issue on appeal was whether part C of the ABC test does, in fact, require proof that the workers performed services for third parties other than the putative employer in order for them to be deemed independent contractors.

### ***Analysis and Holding***

The Connecticut Supreme Court reversed the trial court’s decision, holding that the trial court placed too much emphasis on breadth of the contractors’ client base. Rather, it held that the crux of the inquiry under part C is whether “the worker is wearing the hat of an employee of the employing company, or is wearing the hat of his own independent enterprise.” The Court instructed that “part C must be considered in relation to the totality of the circumstances, with that inquiry guided by a multifactor test. . . . [J]ust as the mere freedom to provide services . . . for third parties is not by itself dispositive under part C . . . whether the individual actually provided services for someone other than the employer is [not] dispositive proof of an employer-employee relationship.”

The Court then provided a non-exhaustive list of ten factors to consider in “evaluating the totality of the circumstances under part C”:

- the existence of state licensure or specialized skills;
- whether the putative employee holds himself or herself out as an independent business through the existence of business cards, printed invoices, or advertising;
- the existence of a place of business separate from that of the putative employer;
- the putative employee’s capital investment in the independent business, such as vehicles and equipment;
- whether the putative employee manages risk by handling his or her own liability insurance;
- whether services are performed under the individual’s own name as opposed to the putative employer;
- whether the putative employee employs or subcontracts others;

- whether the putative employee has a saleable business or going concern with the existence of an established clientele;
- whether the individual performs services for more than one entity; and
- whether the performance of services affects the goodwill of the putative employee rather than the employer.

The Court added that “improper primacy” should not be attributed to “the relative size or success of the putative employee’s otherwise independent business in connection with the totality of the circumstances analysis under part C.” Such emphasis on that particular factor would unfairly subject the putative employer to “the decisions of the putative employee and an unpredictable hindsight review,” without consideration of “the intent of the parties, the number of weekly hours the putative employee actually worked for the employer, or whether the putative employee even sought other work in the field.”

### ***Impact***

*Southwest Appraisal Group, LLC v. Administrator, Unemployment Compensation Act* is a welcome development for Connecticut businesses that engage independent contractors, eliminating concern over the inflexible requirement that such workers *must* provide services for third parties – a fact that, to the extent it is known to the principal, can change over time. Despite this favorable decision, companies should regularly evaluate their relationships with independent contractors under the “totality of the circumstances” test described above, which certainly includes consideration of whether the worker provides services to others. Employers should likewise bear in mind that the *Southwest* holding only addresses independent contractor classification under Connecticut’s Unemployment Insurance Act. Companies in Connecticut that utilize independent contractors need to be aware that different tests applicable under other statutes and regulations, both state and federal, remain in effect.

© 2025 Proskauer Rose LLP.

---

National Law Review, Volume VII, Number 82

Source URL: <https://natlawreview.com/article/connecticut-supreme-court-issues-important-clarification-independent-contractor-test>