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Utah Court Decides Landman Is Employee, Not Independent Contractor

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The Utah Court of Appeals recently held that an individual who worked for an oil and gas exploration company for four months under an independent contractor agreement and who “generally performed work that fit within the duties of landmen,” was an employee and not an independent contractor. The landman's wages were therefore subject to unemployment insurance taxes.

The Court based its decision on the company's failure to establish that the landman was “engaged in an independently established trade,” never reaching the second requirement that she be “free from control or direction over her services.” The landman performed due diligence on various leases. She reviewed lease title documents and records, completed data entry, compiled reports and spreadsheets, filed documents, made copies and answered phones and emails. She worked on her own laptop on which she “assimilated, consolidated, and organized the data and reports submitted by the field landmen.”

The factors leading to the Court's conclusion were:

- The landman performed all of her responsibilities in the company's office during normal business hours, and worked forty to sixty hours per week.
- Both parties provided a similar amount of equipment, i.e., the landman provided a laptop and software while the company provided a copier, fax, and printer.
- The landman did not have any other clients besides the company and her contract contained a “non-compete clause, which she believed prevented her from performing similar services to any other client for a period of 12 months.”
- The landman's two previous employers issued her W-2 employee tax forms instead of 1099 independent contractor tax forms.
- The landman had “very little overhead”; she worked in a company office; she was reimbursed for travel; all the money she received was pure profit with no accompanying risk of loss.

The Court declined to make any generalizations about certain professions and emphasized that Utah law requires a specific inquiry into the facts present in each case when making an independent contractor

determination.

The bottom line is that companies cannot assume that landmen will be treated as independent contractors; every situation should be evaluated based upon its own facts. The employment lawyers at Holland & Hart are happy to answer any questions or assist you with a review of your landmen positions and/or independent contractor designations.

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