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## BLOGS

Employment

# Oregon Court Affirms Ruling That Franchisees Are Employees of Franchisor for Purposes of Unemployment Insurance Tax

The Oregon Court of Appeals recently affirmed rulings by the Oregon Employment Department and an administrative law judge that National Maintenance Contractors ("NMC"), a maintenance services franchisor, owed \$138,029.69 in unemployment insurance taxes because its franchisees were not independent contractors but its employees. *Nat'l Maintenance Contractors, LLC v. Employment Dep't*, 2017 WL 4675106 (Or. Ct. App. Oct. 18, 2017). NMC had argued that it was exempt from unemployment insurance taxes because, as its franchise agreements stated, its franchisees were independent contractors. Applicable Oregon law defined independent contractors as persons "free from direction and control over the means and manner of providing . . . services." In agreeing that NMC controlled the means and manner by which its franchisees provided maintenance services, the court relied on several rights retained and requirements imposed by NMC in its franchise agreements. Those rights and requirements included the right to choose the equipment that its franchisees used, down to the brand; the right to dictate who performed the maintenance services by requiring that franchisees personally perform or supervise the work; and the requirement that franchisees complete training and pass testing on the training regardless of their level of experience. Therefore, the court of appeals affirmed the determination that the franchisees fell within the statutory definition of employee for unemployment insurance purposes.

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