



www.oregon.gov/IC

Interagency Compliance Network Report to the Oregon Legislature

**Bureau of Labor and Industries
Construction Contractors Board
Department of Consumer and Business Services
Department of Justice
Department of Revenue
Employment Department
Landscape Contractors Board**

April 2017

www.oregonindependentcontractors.com

Table of Contents

Executive Summary	3
Participating ICN agencies	4
Outreach and Assistance	5
Enforcement Activities	7
Internal Development	11
External Factors	12
ICN Agency Contacts.....	14

Executive Summary

In 2009, the Legislature created the Interagency Compliance Network (ICN) to improve employers' and workers' compliance with Oregon's tax and employment laws. The ICN is comprised of seven state agencies that share information, collaborate on enforcement, and conduct educational outreach in accordance with Oregon Revised Statute (ORS) 670.700. Every two years, the ICN is required to report on its activities, funding, and revenue impact. This report outlines events from calendar years 2015 and 2016.

Each of the ICN agencies have some involvement with issues around worker classification, cash payments to workers or related workplace and tax issues. The ICN created a framework for these agencies to collaborate where their existing programs and activities relate to each other. Creation of the ICN did not change agencies' existing duties and responsibilities, nor did it provide additional statutory enforcement tools for each agency. Instead, it fostered information sharing and collaboration among the agencies to further their common interests. Because the ICN focuses on getting agencies to collaborate with each other on areas where their separate programmatic responsibilities already exist, it can be difficult to distinguish what activities are specifically supporting the ICN work. For example, the Employment Department does payroll audits of Oregon businesses. The ICN has helped those audits be more collaborative with other agencies and facilitated the sharing of leads regarding potential employer noncompliance as well as providing opportunities for auditors. While looking for issues that related distinctly to Employment Department programs, it has allowed the department to also look for issues that impact its ICN partner agencies. This is both part of the core work the Employment Department does, but also relates to the purpose of the ICN.

Sharing information between agencies remains the top priority of the ICN and collaborative efforts between agencies has increased over the past two years. The ICN operates through a steering committee of management from each agency that meets quarterly and as otherwise needed. There are two subordinate groups that meet regularly as well. The Enforcement Group meets monthly to collaborate on enforcement activities and share tips and leads about non-compliant entities. The newly re-formed Communications Group meets quarterly and as needed to share outreach information, and address other non-enforcement activities such as website maintenance and drafting reports.

In addition to normal staffing levels, during 2015 and 2016, there were additional staff hired at the Employment Department who were dedicated to conducting ICN activities funded through a U.S. Department of Labor grant. The dedicated staff conducted ICN audits and performed many analytical duties including data analysis, drafting of reports, enhanced collaboration with ICN agency staff, and educational outreach activities. Although the funding ended as scheduled on September 30, 2016, many functions and continuity plans were enacted to ensure new processes could be conducted easily on an ongoing basis.

There have been many changes to businesses and industries since the last ICN report, including the legalization of recreational marijuana use in Oregon and the increased presence of "gig" industries, both of which have an impact on ICN agencies and activities. Changes to the way business is conducted in Oregon have changed many of the ways the ICN works to educate the public and enforce compliance with tax and employment laws.

Participating ICN agencies

Seven state agencies make up the ICN:

- Bureau of Labor and Industries (BOLI)
- Construction Contractors Board (CCB)
- Department of Consumer and Business Services (DCBS)
- Department of Justice (DOJ)
- Department of Revenue (DOR)
- Employment Department (OED)
- Landscape Contractors Board (LCB)

The work the ICN does impacts the programs of these agencies in different ways.

For the Employment Department, when workers are not properly classified, it means their wages have not been correctly reported and the employer has not paid all required unemployment insurance taxes. This can delay payment of benefits to workers because there is no record of all of their earnings. It can also mean that because an employer has not paid all of its required taxes, the cost of paying benefits to its workers becomes socialized across those employers who do pay their taxes, ultimately leading to a heavier unemployment insurance tax burden for those employers who do pay their taxes as required.

For the Department of Revenue, when workers are not properly classified, it means their wages have not been correctly reported and that the employer has not withheld tax or paid all the required transit taxes. When companies misclassify workers, DOR does not receive the quarterly withholding due and instead is reliant on the misclassified individual filing a personal income tax return at the end of the year. Individual workers whom are misclassified may also mistakenly claim items as expenses that would not be allowed if they were properly classified. Under the table wages result in lost withholding and transit tax.

In the interest of protecting property owners, the Construction Contractors Board and the Landscape Contractors Board both conduct field enforcement to ensure that contractors properly classify their workers. Enforcement information is shared with the other ICN members. The agencies address worker classification, employment tax and workers compensation requirements in their pre-license and continuing education curricula for licensees. Both agencies disseminate information to the public regarding licensing requirements and how to verify the status of contractor licenses.

For the Bureau of Labor and Industries, misclassification may result in workers being denied the protections available to them under the state's wage and hour regulations. By misclassifying its employees as independent contractors, an employer may fail to: meet its obligations to pay employees minimum wages and overtime; provide employees with rest and meal periods; permit employees to accrue and use sick time; and maintain adequate records of hours worked and wages earned. Additionally, the informal nature of payments by cash tends to promote disputes concerning hours worked and wages paid, and results in inadequate recordkeeping on the part of employers.

Participation in the ICN has increased DCBS' Workers' Compensation Division's ability to share information with, and receive information from, ICN partner agencies. The leads received from other

agencies, along with participation in the compliance “sweeps,” are additional tools that DCBS uses to ensure that employers are complying with workers’ compensation insurance coverage requirements. Identifying employers that are attempting to gain an unfair business advantage by not purchasing required insurance helps to level the economic playing field for all employers in Oregon. Additionally, ensuring that subject employers have workers’ compensation insurance means that workers who are injured at work receive timely benefits and reduces the costs of claims that must be paid from public funds. In addition, the interaction with partner agencies provides opportunities to discuss respective policies and approaches to employer compliance, and to collaborate on issues and challenges that may impact the work that DCBS does.

The Department of Justice works to assist local, state, and federal law enforcement agencies in the investigation and suppression of organized crime, and to investigate the investment of funds in Oregon that have been generated by criminal activities. In light of those mandates, the Department of Justice’s participation in the ICN is focused primarily on working with other members of the ICN to identify criminal misconduct by regulated entities and individuals.

The ICN has focused on the following priorities over the past two years:

- Outreach and assistance;
- Enforcement activities;
- Internal development; and
- External factors.

Each of these topics will be addressed within this report based on data contributed by each applicable ICN agency.

Outreach and Assistance

Sharing information, educating the public about how to comply with employment and tax laws, coordinating outreach events, and providing resources to the public has remained a primary focus of the ICN. Whether information is provided via in-person presentations, materials, or the state’s independent contractor website, all ICN partner agencies have participated in educational outreach over the past two years. Major activities include: a complete overhaul of Oregon’s independent contractor website; enhanced collaboration of conference and presentation attendance between agencies; and establishment of the ICN Communications Group. Additional details of each of these activities are below.

ICN Website – The update of the state’s independent contractor website (www.oregon.gov/IC) began in early 2015 and culminated with the launch of the updated site on February 26, 2016. The purpose of the update was to ensure that all language and information available on the site was accurate and up-to-date, and that the site met statewide standards established by the Department of Administrative Services for state government websites.

Each ICN agency assisted with the website update, and public testers helped design the content and layout of the new site. The website features numerous resources such as industry-specific examples of employee versus independent contractor scenarios, video presentations, outside resources for businesses, and materials on a variety of topics. Visits to the website are trending upward by 7.5

percent compared to site traffic in 2015. Other ICN agencies have links to the updated site, and the site is promoted during outreach activities by ICN agencies.

Educational Outreach Presentations – Educational outreach has been prominent over the past two years. Although each agency retains its own outreach practices, DOR and OED’s collaborative efforts have increased by frequently partnering on presentations, and attending conference events together. CCB’s continuing education program has involved other ICN agencies presenting information to businesses on many occasions. Whenever in-person collaboration is not possible, materials from agencies unable to attend are provided for distribution. This practice has led to stronger relationships between the agencies and better customer service to those seeking information.

The effectiveness of ICN collaboration has led to additional collaboration beyond ICN agencies, including the Secretary of State’s office, the Oregon Health Authority and units not traditionally part of the ICN such as the Oregon Health Insurance Marketplace administered by DCBS. These other agencies and business units frequently share outreach opportunities, and invite ICN agencies to specialized events based on perceived audience interest in ICN materials. Successful teamwork on outreach led to the creation of the ICN Communications Group. This group meets at least quarterly and develops strategies on outreach events, website updates, and obtaining data for reports that the group drafts.

The table below contains data regarding outreach in 2015 and 2016 by ICN agencies where the content involved the ICN. The total number of events attended includes those that were both hosted by an ICN agency or the agency participated in an event. Of the total events attended, the blue column illustrates where ICN partner agencies participated with each other at events:

Agency	Number of Formal Events Hosted by Agency	Number of Non-ICN Hosted Events	Total Number of Events Attended	Number of Collaborative Events (with other ICN agencies)
CCB	49	74	123	15
DCBS	15	6	21	21
DOR	89	90	179	86
OED	92	61	153	92

Nearly 3,000 construction contractors have viewed an hour-long training video on “Paying Under the Table” since it was posted online in spring 2016. The CCB holds in-person continuing education classes on construction contractor regulatory requirements. The CCB recruits guest speakers from other state agencies on topics of who is an independent contractor as well as who is required to have workers’ compensation insurance. The CCB and LCB also staff tables or speak at trade association gatherings throughout the year, as do OED, DOR, DCBS, and BOLI.

Enforcement Activities

Compliance with employment and tax laws is the reason the ICN was established. For many businesses, education about what is required leads to compliance, but for some others, it is not a matter of understanding the requirements, but of finding people who may be intentionally trying to circumvent compliance. To ensure that outreach and educational efforts are successful, each ICN agency conducts some form of compliance process on those subject to their employment and tax laws. Whenever possible, ICN compliance specialists are mindful of situations where other ICN agencies would be interested in participating with compliance checks.

Enforcement Group Activities – The ICN Enforcement Group meets on a monthly basis. The focus of the group is to share information about non-compliant entities, offer assistance with audits, share success stories, and discuss newly identified methods used by non-compliant entities to avoid legal responsibilities.

- ❖ **ICN Audits** – DOR and OED each conduct compliance audits on behalf of other ICN agencies. In addition, both agencies have auditors that conduct joint audits covering programs administered by both agencies including preparing tax assessments resulting from the audit. The table below describes the results of the joint audits performed on behalf of the ICN. These are in addition to the other compliance work these agencies perform.

Unemployment Insurance and Payroll Audits			
ICN Audit Results	2015 8 Audits	2016 9 Audits	Total 17 Audits
Total payroll audited	\$13,476,844	\$17,584,509	\$31,061,353
Total unreported payroll discovered in audits	\$12,017,338	\$13,563,149	\$25,580,487
Total number of misclassified workers identified	112	217	329
Total Unemployment Insurance Tax assessed through audits	\$137,052	\$279,834	\$416,886

In addition to these joint audits, ICN agencies also refer matters to each other. In 2015 and 2016, BOLI referred 30 cases to ICN partner agencies and participated in enforcement activities with other agencies twice.

- ❖ **Compliance Audits and Investigations** – All ICN agencies have different priorities and methods for measuring and enforcing compliance. The sharing of information, when relevant, is vital to identifying non-compliant entities. Each agency conducts normal compliance audits and may share results with other agencies during the audit or after the fact to bring non-compliance issues identified during the normal course of business to the attention of other ICN agencies. Additionally, agencies sometimes conduct combined activities, with compliance staff from multiple agencies going on enforcement sweeps or conducting audits. OED shares all audit information where a change is made to an employer’s quarterly payroll report with DOR on a quarterly basis. Both OED and DOR conduct regular compliance audits in order to provide information to businesses and ensure that employers understand and follow the law regarding taxation and employment. While these audits are not always conducted jointly with other agencies, OED and DOR share audit results with each other any time that a change is made to

the information originally provided by the employer. The table below lists the number of audits performed by OED staff that are separate from ICN specific activity.

OED Regular Compliance Audit Results	2015 1,340 Audits	2016 1,573 Audits	Total 2,913 Audits
Total payroll audited	\$1,032,239,041	\$1,056,544,865	\$2,088,783,906
Total unreported payroll discovered in audits	\$28,984,849	\$20,237,668	\$49,222,517
Total number of misclassified workers identified	3,595	3,440	7,035
Total Unemployment Insurance Tax assessed through audits	\$737,368	\$416,630	\$1,153,998

Although the Department of Revenue has authority to assess penalties based on income taxes an employer should have withheld from their employees, the department doesn't retroactively assess withholding deficiencies when an employer has failed to withhold income taxes from employees. The department's goal is to educate taxpayers on all pertinent tax laws so voluntary tax compliance is maintained for future tax periods.

DOR Regular Compliance Audit Results	2015 4,143 Audits	2016 3,086 Audits	Total 7,229 Audits
Under-reported wages	\$65,733,591	\$102,217,796	\$167,951,387
Withholding Assessments	\$7,414,035	\$3,728,845	\$11,142,881
Tri-Met Assessments	\$1,379,575	\$1,186,283	\$2,565,859
Lane Transit District Assessments	\$998,868	\$185,956	\$1,184,825

DCBS conducts investigations of workers' compensation insurance coverage violations, which may result in penalties being assessed against non-compliant employers. During the course of the investigation, if misclassification of workers or unreported payroll is identified, DCBS shares those findings with OED and DOR. If, during the course of an investigation, DCBS identifies CCB and/or LCB violations (specifically contractors with employees and no active workers' compensation insurance) those findings are shared with the respective agency(s).

DCBS Workers' Compensation Division Investigations	2015 13,309 Investigations	2016 11,792 Investigations	Total 25,101 Investigations
Non-Claim Investigations	12,658	11,205	23,863
Claim Investigations	651	587	1,238
Orders Issued	455	480	935
Penalty Assessments	\$5,910,695	\$6,168,881	\$12,079,576

BOLI conducts investigations into wage claims and complaints from workers and others, which may result in determinations of unpaid wages and civil penalties against non-compliant employers. During the period covered by this report, 49 of these investigations involved ICN issue related claims regarding the possible misclassification of employees as independent contractors, unpaid interns, or volunteers. Unpaid wages owed to workers and civil penalties assessed in these cases totaled \$306,062.93. In these cases, BOLI was able to facilitate the restitution of \$63,032.54 in unpaid wages for Oregon workers, including amounts paid to workers from the state's Wage Security Fund (where unpaid wages are owed by employers who are no longer in business and without available assets to pay wages).

Currently, ICN agencies are collecting impact statistics on a calendar year basis. The ICN agencies will be working to align reporting periods with biennial cycles. Additionally, ICN agencies previously have not separately tracked how much of the amounts assessed from ICN activities are collected. Despite system and process challenges, agencies are exploring whether more detailed collection information can be tracked for future analysis and reporting.

- ❖ **Data Collecting and Sharing** – Each ICN agency has its own method of data tracking and independently chooses which data points will be tracked. Different data elements are relevant for the different programs involved with ICN activities. The ICN Communications Group works on developing common data points to be tracked, with each individual member making efforts within their own agency to meet this need. Having individuals identifying data needs internally within each agency allows subject matter experts to identify data gaps, communicate data tracking needs, and identify reporting opportunities that may not be evident to representatives outside each agency. For example, OED currently does not have a method of tracking which compliance audits are referred to DCBS, and similarly, DCBS historically did not have a method for tracking which of its investigations are a result of an ICN referral. Beginning in December 2016, however, DCBS implemented a system to track their investigations that are referred to OED and DOR, including investigations that are a result of an ICN referral.

These investigations occur frequently; the ability to track them is an opportunity for better reporting and could result in greater collaborative success among agencies. Bearing these opportunities in mind, DCBS has tracked the number of referrals sent to other agencies over 2015 and 2016, outside of the ICN. In 2015, DCBS sent 133 referrals to other agencies, and 118 in 2016.

Detection Efforts – Agencies in the ICN continue to work together to identify methods of detecting those businesses and individuals operating outside of the law.

- ❖ **Sweeps** – ICN enforcement activities include the use of “sweeps,” where ICN agencies travel to regions of the state together and conduct an informal investigation of a worksite to ensure that all compliance issues involving licensing, workers, safety, and payroll are being addressed. These sweeps have proven to be successful as they provide public awareness of compliance requirements being investigated.

CCB coordinates many sweeps, inviting other agencies to participate. In calendar years 2015 and 2016, the CCB conducted nine enforcement sweeps. During these sweeps, the CCB concentrates its field investigators in a particular region of the state to root out unlicensed contractors and other violations of construction contracting law.

The CCB has 10 field investigators who typically work in one of seven assigned regions. During sweeps, the agency assigns multiple investigators to a region. These concentrated enforcement actions resulted in:

- More than 900 job-site checks.
- More than 150 suspected violations.
- Interagency cooperation – DOR and DCBS each participated in three of the sweeps and BOLI participated in two. Also, the CCB verified electrician and plumber licenses on job sites as part of an agreement with DCBS’s Building Codes Division.

- In addition to participating with CCB, the DOR conducted three independent sweeps. In total, 674 job sites were visited in which 711 businesses were checked for compliance. Of the 1,203 employees interviewed, 51 were found to be misclassified.

Violations found during sweeps generally tend to be in three key areas:

- Working as a contractor without a license.
- Having employees but lacking workers' compensation insurance.
- Failure to have a CCB lead-safe license to work on homes built prior to 1978.

The LCB investigators performed more than 500 job-site checks throughout the state in calendar years 2015 and 2016. Resulting potential enforcements were referred to other agencies as warranted, primarily CCB and DCBS.

- ❖ **Cash Payments** – In order to reach and dissuade businesses that pay cash to employees “under the table,” CCB has taken charge of outreach in this area by developing an educational video as part of its continuing education requirements for construction contractors. CCB invited several other ICN agencies to participate in script development, messaging, and appearing in the video in order to ensure that each agency impacted by improper cash payments has a chance to communicate with viewers. The audience for this video is general construction contractors, but the message is appropriate for any business that pays cash to employees. Since the video launched on February 26, 2016, it has been viewed approximately 3,000 times.

DOJ, OED and DOR have been working closely together to identify businesses that deliberately circumvent state laws and employ methods to avoid detection by ICN agencies, such as paying employees “under the table” in cash. Our efforts in 2016 have focused on identifying conduct by businesses that is suitable for a criminal investigation and possible prosecution.

- ❖ **Referrals** – Many ICN investigations are initiated based on referrals from the public. Each agency has its own method for complaint intake from the public. These complaints, when relevant to other ICN agencies, are shared at monthly Enforcement Group meetings. Additionally, the ICN website has a method for complaint submittal which can be anonymous. Complaints submitted through the ICN website are reviewed and forwarded to partner agencies that would be interested depending on the nature of the complaint. The ICN complaint form was created and released prior to the February launch of the ICN website, resulting in 55 complaints being received and distributed to ICN agencies since July of 2015. Additionally, customers can call a single point of contact with questions about the ICN, classification, or resources. These calls are usually handled with one-call resolution, with occasional referral to other agencies when necessary. Currently, OED manages the emails and calls generated from the ICN website.

In addition to complaints received from the public, agencies are working on new systemic methods to detect non-compliance. OED is analyzing statistical audit information to detect patterns in non-compliant businesses in order to select similar businesses for audits.

Department of Justice Involvement – The Department of Justice has been actively participating in ICN enforcement activities by requesting information from agencies in order to gain evidence for prosecutions and develop strategies for case development. Although there were no criminal

prosecutions resulting from ICN cases in 2015 and 2016, DOJ continues to attend ICN meetings and request assistance from ICN agencies to develop cases.

Recidivism – The ICN has recently been working on methods to track whether audited businesses remain compliant after being audited or investigated. One method of tracking this for DOR and OED purposes is to see which businesses submitted quarterly payroll reports after a payroll audit. Of the ICN audits completed in 2015 and 2016, 100 percent of audited businesses submitted payroll reports totaling over \$24 million in payroll. While this is not a definitive indicator of full compliance it does give at least a partial picture of ongoing compliance by employers. The only way to determine if employers are remaining fully compliant is to perform another payroll audit. OED typically does not conduct follow-up audits within a three-year period, but does investigate complaints or referrals about the business if any are received.

Complaints about recently audited businesses misclassifying workers are rarely received. Most complaints received are on businesses that either have never been audited or have a current audit scheduled. Compliance specialists also identify new businesses that have not been following requirements and work with them to bring them into compliance. In the 2011–13 and 2013–15 biennia, business registrations initiated by six DOR Compliance Specialists on 340 businesses generated a total of approximately \$1.5 million in withholding tax payments and \$2.8 million in transit tax payments between July 2011 and November 2016. It is impossible to ascertain whether these businesses would have come into compliance in the absence of DOR intervention, but the ideal outcome of compliance specialists’ work is the generation of compliant taxpayers who file and pay voluntarily as a result of education and a desire to avoid DOR’s enforcement measures.

The Workers’ Compensation Division at DCBS reinvestigated 40 businesses in 2015, and 51 in 2016. DCBS will reinvestigate a business for violations of workers compensation coverage, which are primarily the result of a notice of cancellation of coverage received from an insurance provider, and injury claims where there is no active coverage on file. Referrals and external complaints may also initiate a reinvestigation. Over the two-year period, 26 requests for injunction and 11 requests for contempt were referred to DOJ.

Internal Development

The ICN is constantly working to improve methods and expand its abilities to educate the public, encourage compliance with tax and employment laws, and enhance each agency’s collaborative abilities. This section describes some of the proposed efforts underway for improvement.

Single-Path Appeals – OED and DOR have been gathering data to examine whether it is advisable to pursue a potential “single-path appeals” pilot project. Currently, both agencies have separate appeal paths for each agency’s tax assessments. Even in collaborative audits, appeals must take place separately with costs to both the agencies and the impacted businesses. Given the non-concurrent appeals and the expenses involved, appealing an ICN audit is costly for agencies and the public and can take months or even years. OED has started to develop options for a potential single-path appeal, where an assessment can be appealed in one forum with both agencies. While this endeavor is still in its early stages, the impact to both agencies’ business practices as well as the impact to the Department of Justice and Office of Administrative Hearings, is being considered and no changes can

take place without additional research and potential legislation. This topic has been discussed before, but due to the complexity and many changes required on a legal, operational, and policy basis, no resolution was reached. The different statutory appeals processes need to ensure due process and trying to create efficiencies are difficult to balance, but the ICN believes the potential gains make this worth further exploration.

Non-ICN Agency Involvement – On many occasions, agencies outside the ICN have played roles in furthering ICN goals, especially in regard to educational outreach. Often times the sharing of information about presentation opportunities, referrals to business conferences, and recommending ICN speakers to certain groups has resulted in many successful interactions with the public. The Oregon Secretary of State’s Office of Small Business Assistance has been a steadfast supporter of ICN activity, as has the Oregon Health Authority. Whether these relationships can be leveraged further to include compliance issues is worth exploring, taking into account the interests of all agencies and the requirement of new interagency agreements for ICN inclusion.

Excluded Workers – Oregon law has multiple definitions of employment used by various agencies and programs. There are also many different exemptions from the various definitions, with some exemptions applying only to some programs or requirements. OED, DOR, and CCB use the definitions of “Employment” found in ORS chapter 657 and 670, with exclusions to the term occurring in ORS 657.030 and 657.040 through 657.094. DCBS uses definitions found in ORS 656.027 for excluded employment. While there is not currently a single definition in use by ICN agencies across all programs, it would not be possible to create just a single ‘independent contractor/employee’ test that applies in all circumstances. If all state programs were to adopt a single definition, it would put many state programs out of sync with their federal counterparts (for example, if BOLI adopted the ORS 670.600 test, then state and federal minimum wage and Fair Labor Standards Act issues would be using different tests because the federal law has its own test which is not the same as ORS 670.600). The current definition in ORS 670.600 is the result of collaboration in several past Legislative sessions. The ICN continues to work on a way to present this complex information in an easily accessible way. A common misconception that became evident in 2016 is the idea that workers falling under a statutory exemption are automatically considered independent contractors. At least one formal presentation was conducted to address this topic, which generated many follow-up questions and concerns from the audience. There is a benefit in differentiating between excluded workers and independent contractors, but without accurate data regarding the number of these workers, it is difficult to know how significant these efforts would be.

External Factors

ICN agencies must be reactive to certain situations beyond the control of the ICN. While ICN agencies take neutral stances on these topics, they can require a reassessment of how an agency will conduct business.

Court of Appeal Decisions – Four separate Court of Appeals decisions found workers to be independent contractors after OED found the workers to be employees. These different interpretations of ORS 670.600 have expanded the group of workers that are considered independent contractors, and clarify how OED and DOR apply the independent contractor statute.

Gig Economy Service Providers – Another development in Oregon is the influx of companies that offer transportation network services or other services, which liaise between a customer desiring service and an individual agreeing to provide such service. There is no statewide ICN opinion on any of these employers. Each agency is addressing it as it applies to their program. Some agencies have released official opinions on these businesses, some have specific exclusions for the service in question and others are addressing worker classification issues on a case-by-case basis (audits). Audits of these businesses are time consuming due to the nationwide scale of some of these businesses, meaning that acquisition of records is difficult. Some businesses are not located in Oregon and are reluctant to cooperate. ICN agencies continue to monitor opinions from other states and agencies, and will apply Oregon law appropriately. While aspects of the gig economy reflect the evolving impact of technology on the business environment, it is not clear whether there is any fundamental difference between gig economy business models and the many other existing business models that would warrant not using the existing laws to address independent contractor and employee issues.

Marijuana Businesses – Ballot Measure 91 (2014), and subsequent legislation passed in 2015, allows for recreational marijuana sales and use in Oregon. The state law conflicts with federal law (as do similar laws allowing marijuana use in other states) and presents a unique challenge to workers, employers, and state regulatory agencies. Most banks are subject to federal requirements, and since marijuana sales are federally prohibited, banks cannot accept cash deposits resulting from marijuana sales. This forces licensed recreational marijuana retailers to retain large amounts of cash that cannot be secured in banks. Businesses with a surplus of cash could be tempted to pay employees in cash, also potentially avoiding payment of required taxes. Businesses that remain compliant and pay all required obligations must do so in cash as well, requiring DOR to develop a secure process for accepting large cash payments.

The temptation to pay workers under the table can best be addressed through diligent contact with recreational marijuana employers. OED, DOR, and DCBS have collaborated with the state agency administering recreational marijuana sales, the Oregon Liquor Control Commission (OLCC), to be included in the OLCC's Business Readiness Guide. This resource contains several entries from various agencies that wish to communicate and offer resources to businesses on how to comply with laws and rules that apply to them. Both BOLI and DCBS have noticed a recent uptick in non-compliance from marijuana businesses, including paying workers in cash under the table, failing to obtain worker's compensation, and stating that all workers are independent contractors. Efforts are being made to address non-compliance, including discussions of combined outreach specifically to marijuana businesses to help bring them into compliance. DCBS has investigated 21 marijuana businesses since October of 2015, seven of which were due to injury claims.

ICN Agency Contacts

Employment Department

Isabel Joslen
Assistant Division Director
Tax Unemployment Insurance Division
Isabel.M.Joslen@oregon.gov

Department of Consumer and Business Services

Lou Savage
Administrator
Workers' Compensation Division
Louis.D.Savage@oregon.gov

Department of Revenue

John Galvin
Withholding and Payroll Tax Manager
Business Division
John.M.Galvin@oregon.gov

Department of Justice

Michael Slauson
Chief Counsel
Michael.Slauson@state.or.us

Bureau of Labor and Industries

Gerhard Taeubel
Administrator
Wage and Hour Division
Gerhard.Taeubel@state.or.us

Construction Contractors Board

James Denno
Administrator
James.S.Denno@state.or.us

Landscape Contractors Board

Elizabeth Boxall
Administrator
Elizabeth.Boxall@lcb.state.or.us