

Workers' compensation liability of contractors

This document contains general information. It is not legal advice. Every situation is different and other laws might apply to your situation. If you have questions, contact an attorney, visit the Department of Labor and Industry website at www.dli.mn.gov/WorkComp.asp or call the Workers' Compensation Hotline at 1-800-342-5354 (press 3 for workers' compensation or 6 for contractor registration). For more information about construction contractor registration, visit www.dli.mn.gov/CCLD/Register.asp.

Typically, an employer is required by law to purchase workers' compensation insurance for its employees. However, even if a contractor does not have employees or does not consider its workers to be employees, the contractor may want to purchase workers' compensation insurance to protect itself from liability in the following situations.

1. **Uninsured subcontractor:** A general contractor is liable for all of the workers' compensation benefits due to the injured employee of any subcontractor if that subcontractor does not have workers' compensation insurance. An intermediate contractor may also be liable.
2. **Employee misclassification:** A contractor may consider an individual that he or she is doing business with to be an independent contractor¹, but workers' compensation laws and laws governing independent contractors in the building construction and trucking industries may categorize that same individual as an employee. If the individual is injured, the contractor may be determined to be the individual's employer and found liable for workers' compensation benefits.
3. **Self-coverage:** Contractors may want to purchase workers' compensation coverage for themselves and their exempt employees, such as certain family members, to protect their income and cover medical expenses in the event of a work-related injury.

1. General or intermediate contractors may be liable for workers' compensation benefits when a subcontractor is uninsured.

Minnesota Statutes § 176.215, subd. 1 (2012) states: "Where a subcontractor fails to comply with this chapter, the general contractor, or intermediate contractor, or subcontractor is liable for payment of all compensation due an employee of a subsequent subcontractor who is engaged in work upon the subject matter of the contract." This means that if the employee of a subcontractor is injured and the subcontractor does not have workers' compensation insurance, the general contractor is liable for the injured worker's benefits. If there is a chain of multiple contractors, the employee's workers' compensation benefits may be collected from any contractor up the chain. Even if a subcontractor claims to use only independent contractors and has no employees, there is still a risk that under workers' compensation law the subcontractor's workers will be considered employees. (See information below about employee misclassification.)

To illustrate this, consider the following example. General contractor "A" contracts with intermediate contractor "B" to perform roofing and painting needed on a building. Intermediate contractor "B" contracts with subcontractor "C" to provide a roofing crew for the day. Subcontractor "C's" employee is injured working on the roof, but subcontractor "C" does not have workers' compensation insurance. General contractor "A" or

intermediate contractor “B” may then be liable for workers’ compensation benefits to the injured roofer, even if they do not have employees of their own.

Because of this potential liability, contractors often purchase workers’ compensation insurance to protect against the risk that one of their subcontractors will be uninsured when an injury occurs.

2. Contractors might have employees (for purposes of workers’ compensation law) who they may not consider to be their employees

If a subcontractor is an individual and works alone, he or she could be an employee of another contractor for purposes of workers’ compensation liability. The individual may be an employee even though the contractor refers to the individual as an independent contractor, provides the individual with a tax Form-1099 instead of a W-2 at the end of the year and does not withhold taxes from his or her paychecks. This mistake is called employee misclassification.

A. Construction industry – A specific law applies to individuals performing any commercial or residential building construction or improvement services. To be considered an independent contractor, a person performing these services must meet all nine of the requirements listed in this law (sometimes called the nine-factor test).^{2,3} An individual who does not meet these requirements will be considered an employee of the general or hiring contractor.

Additionally, the law requires individuals performing building construction or improvement services to register with the Department of Labor and Industry unless an exemption applies.⁴ More information about the nine-factor test and registration is at www.dli.mn.gov/CCLD/Register.asp. Individuals who do not register, if required, are presumed to be the employees of the construction contractors hiring them.

Even if an individual performing building construction services is an owner or partial owner of a business entity (such as an LLC), the individual is considered an employee of the general or hiring contractor unless: (1) the business entity meets the nine-factor test mentioned above; (2) invoices and payments are in the name of the business entity; and (3) the business entity is registered with the Secretary of State. The business entity must also register with the Department of Labor and Industry unless an exemption applies. If the business entity is not registered with the department, individual owners who perform construction services will be presumed to be employees of the construction contractors hiring them.

To avoid misclassification, building construction contractors should verify the individual or business entity they intend to subcontract with is properly registered with the Department of Labor and Industry (or is exempt from registration) and with the Secretary of State (if required) **and** meets the nine-factor independent contractor test. An online searchable database of registered contractors can also be accessed at www.dli.mn.gov/CCLD/Register.asp.

B. Trucking and messenger/courier industries – Effective Aug. 1, 2009, the determination of independent contractor status for workers operating a car, van, truck, tractor or truck-tractor that is licensed and registered by a governmental motor-vehicle agency is governed by Minnesota Statutes § [176.043](#).

C. Other industries – For information about how to determine if an individual is an independent contractor or an employee in other industries, visit www.dli.mn.gov/WC/IndpCont.asp.

3. Contractors may want to purchase workers' compensation coverage for themselves and exempt employees, such as certain family members, in case they are injured while working.

The workers' compensation law does not require some independent contractors and business owners to cover themselves and certain exempt family members who are their employees. Contractors should consult an insurance agent to discuss the benefits of electing coverage for themselves and these family members under a policy, as well as coverage that will protect them from potential liability in the circumstances described above.

Additional resources

Department of Labor and Industry publications

- Brochure about contractor liability
www.dli.mn.gov/WC/Pdf/construction_contractor_wc.coverage.pdf
- Workers' compensation insurance coverage: Corporations and limited liability companies
www.dli.mn.gov/WC/Pdf/infosheet_coverage_corps_llcs.pdf
- Construction contractor registration frequently asked questions
www.dli.mn.gov/CCLD/Pdf/registrationFAQ.pdf

Minnesota statutes and rules

- See generally, Minnesota Statutes Chapter 176, the Workers' Compensation Act, which is available online at www.revisor.mn.gov/statutes/?id=176. Copies of Chapter 176 are available for purchase from Minnesota's Bookstore: in person at 660 Olive Street, St. Paul, MN 55155; by phone at (651) 297-3000 or 1-800-657-3757; or online at www.minnesotasbookstore.com.
- Relevant to workers' compensation insurance coverage:
 - Minn. Stat. § [176.011](#): Defines important terms used in the statute
 - Minn. Stat. § [176.021](#), subd. 1: The basic requirement for insurance coverage by employers
 - Minn. Stat. § [176.041](#): Exclusion, exceptions and election of coverage
 - Minn. Stat. § [176.181](#): Outlines the basic requirement for coverage by employers
 - Minn. Stat. § [176.215](#): Liability for payment of compensation when a subcontractor fails to comply with Minn. Stat. Chapter 176
 - Minnesota Rules [Chapter 5224](#): Independent contractor rules for certain jobs
 - Minn. Stat. § [181.723](#): Independent contractors in construction

¹An independent contractor who meets the requirements of Minnesota Statutes §§ 176.041 and 181.723, or § 176.043, is excluded from the Minnesota Workers' Compensation Act, although the independent contractor's employees are not excluded.

²See Minnesota Statutes § [181.723](#) as amended by 2014 Minn. Laws, ch. [305](#), sections 13 through 17, 26 and 31.

³Before Sept. 15, 2012, independent contractor exemption certificates (ICECs) were issued. For information about how ICECs are affected by the law passed in 2012, see www.dli.mn.gov/CCLD/Register_Icec.asp.

⁴See 2014 Minn. Laws, ch. [305](#), sections 13 through 17, 26 and 31.; to be codified as Minnesota Statutes § [326B.701](#).