

CONTRACTOR REGISTRATION LAW

On May 21, 2014, Governor Dayton signed into law changes to the Minnesota contractor registration law set forth in Minnesota Statutes section 181.723. Those changes made the contractor registration pilot program permanent. All construction subcontractors that do not otherwise hold a trade license (such as general contractor, plumbing, electrical, etc.) must register with the Department of Labor and Industry. It does not make a difference if the subcontractor is a sole proprietor or an entity, the subcontractor must register. Where previously, failure to be registered automatically made the subcontractor an employee of the person hiring them, one favorable change to the law makes that presumption rebuttable based on the nine factor test. In addition, for subcontractor owners of the subcontractor entity, not only must the nine factor test be met but invoices and payments need to be in the name of the subcontractor entity and the entity must be registered with the Minnesota Secretary of State. The penalty for violation of this law, in addition to the employment related tax effects of a reclassification, are \$2,000 to the unregistered subcontractor and up to \$10,000 licensing penalty for the person hiring them. The penalty for the unregistered subcontractor will be waived if they register within thirty days from the penalty order. The penalty for the person hiring them is waived for the first violation. I have attached the nine factor test to this memo.

Bottom line: make sure all of your subcontractors are registered. Registration is free and can be done by going to: <https://secure.doli.state.mn.us/license/initialapp.aspx?code=IR>. Verify their registration at least annually at: <http://www.dli.mn.gov/ccld/LicVerify.asp>. Make sure they have a federal EIN number. Obtain an IRS Form W-9 from them for that verification: <http://www.irs.gov/uac/Form-W-9,-Request-for-Taxpayer-Identification-Number-and-Certification>. Make sure they invoice for their work in the name of their company and issue payment only to their company (not individuals). Finally, make sure their entity is registered with the Minnesota Secretary of State by checking at: <http://mblsportal.sos.state.mn.us/>.

MINNESOTA CONTRACTOR REGISTRATION LAW 9-POINT TEST

An individual is an independent contractor if he or she:

1. maintains a separate business with the individual's own office, equipment, materials, and other facilities;
2. holds or has applied for a federal employer identification number or has filed business or self-employment income tax returns with the federal Internal Revenue Service if the individual has performed services in the previous year;
3. is operating under contract to perform the specific services for the person for specific amounts of money and under which the individual controls the means of performing the services;
4. is incurring the main expenses related to the services that the individual is performing for the person under the contract;
5. is responsible for the satisfactory completion of the services that the individual has contracted to perform for the person and is liable for a failure to complete the services;
6. receives compensation from the person for the services performed under the contract on a commission or per-job or competitive bid basis and not on any other basis;
7. may realize a profit or suffer a loss under the contract to perform services for the person;
8. has continuing or recurring business liabilities or obligations; and
9. the success or failure of the individual's business depends on the relationship of business receipts to expenditures.

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