



FACT Sheet



Who may work as an independent contractor in the construction industry?

Exemption certificate

State law requires individuals working as independent contractors in the residential and commercial construction industry to obtain an Independent Contractor Exemption Certificate (ICEC) from the Department of Labor and Industry. For purposes of the state workers' compensation, unemployment insurance, wage and hour occupational safety and health laws and state and federal tax withholding, individuals doing residential and commercial construction work without an ICEC will be employees of the contractor for whom they are working.

These businesses are characterized as contracting, performing work and receiving compensation from another contractor. **The ICEC is only required for independent contractor sole proprietorships who subcontract.**

Businesses that are registered as another business entity with the Minnesota Secretary of State do not qualify for the ICEC. This includes corporations, LLCs and partnerships. Also, the ICEC does not apply to construction sales, many types of landscaping (see Minn. Statutes 181.723, sub. 2) construction design, manufacturing, cleanup, deliveries or maintenance.

To obtain an ICEC, individuals must complete and submit an application that establishes that they meet the conditions required to operate as an independent contractor. Applications are available at www.dli.mn.gov/cclld/icec.asp.

Certificate holders may work as either independent contractors or employees. Whether a certificate holder is working as an independent contractor or employee will depend on the conditions of the particular work relationship.

To operate as independent contractors, individuals must be able to meet the conditions set out in the law's nine-factor test. View the nine-factor test at www.dli.mn.gov/cclld/icec.asp.

Apply for a certificate

Applications for the ICEC are available on the DLI Web site at www.dli.mn.gov/cclld/icecapply.asp. **Note:** The 2010 legislature extended the renewal period for the ICEC from two years to four years. Anyone who obtained an ICEC before March 1, 2009, will not have to renew until March 1, 2013. All other ICECs are valid for four years from the date of issuance.

Contractor responsibility

Contractors will be obligated to verify that the workers with whom they enter into agreements as independent contractors have a current ICEC.

DLI maintains a list of certificate holders on its Web site, and certificates for those individuals are available to download and print. Contractors are required to maintain a copy of these certificates for five years.

Individuals and contractors who fail to comply with the law are subject to a penalty of up to \$5,000 for each violation and will be reported to workers' compensation, unemployment insurance and revenue regulation for further action.

For more information about the ICEC, visit www.dli.mn.gov/cclld/icec.asp

This fact sheet is a general outline, subject to statutory change. To read the text of the law, visit www.dli.mn.gov/cclld/icec.asp. Determination of independent contractor status for those doing commercial or residential building construction or improvements in the public or private sector is governed by Minnesota Statutes §181.723.

443 Lafayette Road N. • St. Paul, MN 55155 • E-mail: dli.ic@state.mn.us • Phone: (651) 284-5074 • TTY: (651) 297-4198