

MINNESOTA DEPARTMENT OF LABOR AND INDUSTRY

Construction Codes and Licensing Division



Independent Contractor Exemption Certificate

Presentation Agenda

1. Overview
2. Statute and Rule
3. Nine Factor test
4. Application
5. Implications
6. Q&A

Why is this certification necessary?

- According to conservative estimates, 14% of Minnesota employers misclassified at least one worker as an independent contractor in 2005
- To address this issue, the MN Legislature enacted MN Statute 181.723 in 2007 which requires individuals who wish to work as independent contractors in the construction industry, to obtain an Independent Contractor Exemption Certificate (ICEC)

Why is this certification necessary?

(con't)

- Workers misclassified as independent contractors do not receive adequate benefits and protections.
- For the purposes of unemployment insurance, wage and hour and occupational safety and health laws, workers without an ICEC will automatically be considered employees of the contractor for whom they work

Statute and Rule

- 2007 MN Statute 181.723
- MN Rule 5202
- Enforcement effective January 1, 2009

Who is covered by the new law?

- This law applies to individuals/sole proprietors performing public or private sector commercial or residential building construction or improvement services.
- The law only applies if the individual is performing services in the course of the hiring person's trade, business, profession or occupation.

Who is exempt from the new law?

It does NOT apply to:

- Corporations, cooperatives, limited liability companies, partnerships or other business entities created by statute
- Individuals contracting directly with a homeowner or property owner
- Construction cleaning and janitorial services
- Manufacturers, retailers, and suppliers who do not install or attach their products
- Some landscaping services:

Landscaping that does require ICEC

New landscaping performed as part of a contract for the construction or improvement of a building.

Minn. Rule Pt. 5202.0120, subp. 3

Impact on Employers

Individuals engaging in construction work without an ICEC will automatically be deemed to be employees of the contractor(s) for whom they are working.

Impact on Employers (Con't)

The employer will be responsible for compliance with the following:

- Workers' compensation insurance
- Unemployment insurance
- Workplace health and safety
- Labor standards
- Tax withholding, including FICA

To Obtain an ICEC

- To obtain an ICEC and operate as an independent contractor in the state of Minnesota, individuals must be able to demonstrate that they are able to meet the conditions set out in the new law's nine-factor test.
- This is the same nine-factor test that has governed the construction industry under existing workers' comp statutes.

The Nine-Factor Test

In order to be deemed an independent contractor, an individual must meet all nine factors:

1. Maintain a separate business with their own office, equipment, materials and other facilities.
2. Hold or have applied for a federal employer identification number (FEIN), or provide proof of filing of individual taxes for services provided the previous year.

ICEC – Nine-Factor Test (Cont'd)

3. Operate under contracts to perform specific services for specific amounts of money and under which they control the means of performing the services.
4. Incur the main expenses related to the services that the individual performs under contract.
5. Is responsible for the satisfactory completion of services and is liable for failure of completion.

ICEC – Nine-Factor Test (Cont'd)

6. Receive compensation for services under a contract on a commission or per-job competitive bid basis and not any other basis.
7. May realize a profit or suffer a loss under contracts to perform services.
8. Has continuing or recurring business liabilities or obligations.

ICEEC – Nine-Factor Test (Cont'd)

9. The success or failure of the individual's business depends on the relationship of business receipts to expenditures.

ICEC

- An ICEC permits individuals to work as independent contractors
- Certificate holders, however, may work as either independent contractors or employees
- To be an independent contractor, in addition to having an ICEC, ***the conditions of the work relationship must also meet the nine-factor test***

What do I do after my subs get the ICEC?

- Use the DLI ICEC Lookup
 - Print the Certificate
 - Keep on file for 5 years
 - Check photo ID
- Use the 9 Factor Test in work relationship
- Check MN Secretary of State Office online for status of other business entities

To Obtain an ICEC

- To Obtain an ICEC, individuals must complete and submit an application that establishes they are able to meet the conditions required to operate as an independent contractor.

ICEC - Application

- DLI has the ICEC application and instructions available on its Web site at www.dli.mn.gov/ccld/icec.asp.
- The application and the renewal fee for the certificate is \$165.
- Independent contractors are required to renew their exemption certificate every four years (2010 law change).

Application

Minnesota Department of Labor and Industry
 Financial Services/Independent Contractor
 PO Box 64225
 St. Paul, MN 55164-0225
 Phone: (651) 284-5074
 Fax: (651) 284-5743

Independent Contractor Exemption Certificate Application



DO NOT USE THIS SPACE

E-mail: dli.fc@state.mn.us
 Website: www.doli.state.mn.us/ic

PRINT IN BLUE OR BLACK INK or TYPE
 Unreadable or illegible applications may be denied.

Review Instruction Sheet prior to completing Application.

| | | | | | |
|--|--|---|--|---|--|
| THIS APPLICATION IS FOR: <input type="checkbox"/> Check here if you are only applying for an Independent Contractor Exemption Certificate for a fee of \$150. | | Make check payable to: Minnesota Department of Labor and Industry | | For DLI Use Only Application Number | |
| If you are applying for both an Independent Contractor Exemption Certificate and a Residential Building Contractor or Remodeler License, the combined fee with Recovery Fund Contribution is: <input type="checkbox"/> Less than \$1 million Total Fees Is \$310 <input type="checkbox"/> \$1 million to \$5 million Total Fees Is \$360 <input type="checkbox"/> More than \$5 million Total Fees Is \$410 (you must complete both applications) | | DO NOT STAPLE CHECK TO APPLICATION OR PAPERWORK | | Date | |
| | | Write your check number | | Amount paid | |
| | | | | RSRC 4150 – IC 4091 – RBC 4101 – Recovery Fund | |

| | | |
|---------------------------|---------------|----------------|
| 1. SOCIAL SECURITY NUMBER | DATE OF BIRTH | E-MAIL ADDRESS |
|---------------------------|---------------|----------------|

| |
|--|
| 2. FEDERAL EMPLOYER IDENTIFICATION NUMBER (FEIN) |
|--|

| | |
|---------------------------------|--|
| 3. MN TAX IDENTIFICATION NUMBER | 3a. UNEMPLOYMENT INSURANCE TAX ID NUMBER |
|---------------------------------|--|

| | |
|---|---|
| <input type="checkbox"/> Not required, no employees | <input type="checkbox"/> Not required, no employees |
|---|---|

| | |
|--|--|
| 4. APPLICANT FULL LEGAL NAME (first, middle, last) | 5. HOME PHONE NUMBER (include area code) |
|--|--|

| | | | |
|---------------------------|------|-------|----------|
| 6. APPLICANT HOME ADDRESS | CITY | STATE | ZIP CODE |
|---------------------------|------|-------|----------|

If the business name and address are the same as the name and address shown above, skip to Section A. Enter business name (DBA – doing business as) and business address below. If the business name does not include your first and last name, then the business name must be registered as an "assumed name" with the Office of the Minnesota Secretary of State, Minnesota State Retirement Building, 60 Empire Drive, St. Paul, MN 55103, (651) 296-2803, 1-877-551-8767, or www.sos.state.mn.us. You must attach a copy of your Certificate of Assumed Name.

| | |
|-------------------------|---------------------------------------|
| 7. BUSINESS OR DBA NAME | 8. BUSINESS PHONE (include area code) |
|-------------------------|---------------------------------------|

| | | | |
|-------------------------------|------|-------|----------|
| 9. APPLICANT BUSINESS ADDRESS | CITY | STATE | ZIP CODE |
|-------------------------------|------|-------|----------|

10. For purposes of serving legal documents or if DLI has questions about this application use:
 my business address and phone number or my home address and phone number

11. Section A
 You must provide all supporting documentation described in Section A. Please check each box appropriately to help identify what documentation is included with your application.

- Documentation of ownership or control of facility space used in performing the services for which you are seeking the exemption certificate. Examples include rental or lease agreements (other than a post office box) or tax documents showing expenses for business use of home (such as IRS form 8829).
- Documentation of ownership or control of equipment, tools, materials, or vehicles necessary to perform the services for which you are seeking the exemption certificate. Examples include contracts, rental or lease agreements, deeds and receipts or tax documents showing such ownership or control such as Internal Revenue Service Schedule A or form 4562.
- A color photocopy of a current photo identification document issued to the applicant by the United States or a state or territory of the United States.
- Template of the contracts you intend to use to provide the services as an independent contractor under an exemption certificate.
- Certificate of Compliance with Minnesota Workers' Compensation Law form; available at www.doli.state.mn.us/ccldforms.

Required Information

Section A

- Documentation of ownership or control of facility space used in performing the services for which you are seeking the ICEC
- Documentation of ownership or control of equipment, tools, materials, or vehicles used in performing the services for which you are seeking the ICEC
- Color photocopy of a current ID issued to the applicant by the U.S. or a state or territory of the U.S.
- Template of the contracts you intend to use as an Independent Contractor under the ICEC
- Certificate of Compliance with Minnesota Workers' Compensation Law form available at www.dli.mn.gov/ccld/icec.asp

Discretionary Information

Section B (5 of the 11 items must be provided)

- State or Federal tax documents that show income earned and tax paid and owed, such as IRS tax returns on forms 1040 and 1040SS and MN Department of Revenue tax returns on form M1, income, profit or loss from a business such as IRS Schedule C or C-EZ, self-employment tax paid or owed such as IRS Schedule SE, the sale of business property such as IRS form 4797, reporting cash payments received in a trade or business such as IRS form 8300, certificate of exemption of payment of sales tax such as MN Department of Revenue form ST3 and IRS 1099 forms

Discretionary Information (cont'd.)

- A commercial liability insurance policy or bond covering you or your business, office equipment and materials
- A workers' compensation policy covering the applicant
- Business or building permits held or applied for
- Bills or invoices from and payments made to vendors, suppliers, subcontractors, or other persons
- Contracts with vendors, suppliers, subcontractors, or other persons
- Bank statements and accounting statements showing receipts, expenditures, and profit or loss for your business
- Trade or professional memberships or affiliations
- Marketing or advertising materials
- Documentation of payment to other independent contractors as shown on IRS form 1099 and 1096
- Documentation of compliance of laws related to
 - A) Workers' compensation or unemployment insurance and
 - B) Payment or withholding or wages as shown on IRS W-2 and W-3 forms, IRS forms 941 and 944, MN Department of Revenue annual withholding/reconciliation and information returns

ICEC – Independent Contractors Prohibited Activities

An individual shall not:

- (1) perform work as an independent contractor without first obtaining from DLI an independent contractor exemption certificate;
- (2) perform work as an independent contractor when the DLI has denied or revoked the individual's independent contractor exemption certificate;
- (3) transfer their ICEC to another individual or allow another individual to use the individual's ICEC;

ICEEC Prohibited Activities (Cont'd)

- (4) alter or falsify an ICEEC;
- (5) misrepresent the individual's status as an independent contractor; or
- (6) make a false material statement, representation, or certification; omit material information; or alter, conceal, or fail to file a document required by this section or any rule promulgated by the commissioner under rulemaking authority set out in this section.

ICEC Prohibited Activities (Cont'd)

A person shall not:

- (1) require an individual through coercion, misrepresentation, or fraudulent means to adopt independent contractor status;
- (2) knowingly misrepresent that an individual who has not been issued an ICEC or is not performing services for the person under an independent contractor exemption certificate is an independent contractor; or

ICEEC Prohibited Activities (Cont'd)

- (3) make a false material statement, representation, or certification; omit material information; or alter, conceal, or fail to file a document required by this section or any rule promulgated by the commissioner under rulemaking authority set out in this section.

- Minn. Stat. §181.723, subd. 7(b)

What are the penalties for non-compliance?

- Individuals and contractors who fail to comply with subdivision 7 of the statute are subject to a penalty of up to \$5,000 for each violation
- Penalties will be deposited in the Assigned Risk Safety Account

What are the penalties for non-compliance? (Cont'd)

- Violators will be reported to other state agencies:
 - MN Department of Revenue
 - MN Department of Employment and Economic Development
 - MN Department of Labor and Industry
 - Workers' Compensation
 - Construction Codes and Licensing Enforcement

Benefits

- Intended to benefit the general contractors who have been obeying the law by making it more difficult for non-compliant general contractors to continue to misclassify their workers, and it benefits employees by ensuring they receive the full protection of the law.

Benefits

- True independent contractors should benefit by avoiding problems with potential employers (general contractors) by clearly establishing their legal status as an independent contractor.

What if I have more questions?

- For more information the following resources are available:
- www.dli.mn.gov/ccld/icec.asp
- Info line 651-284-5074
- MN Department of Labor and Industry
443 Lafayette Road N.
St. Paul, MN 55155

Other Agency Information

- Secretary of State
 - www.sos.state.mn.us
- Department of Revenue
 - www.dor.state.mn.us
- Department of Employment and Economic Development
 - www.deed.state.mn.us
- IRS
 - www.irs.gov

Independent Contractor Exemption Certificate

Q & A

Question: My husband is a self-employed remodeler who works for other contractors. His only employees are our two sons. They are self-employed on their taxes, they do not meet the nine-factor test. Who needs an ICEC?

Answer: Your husband will need the exemption certificate. Your sons won't need it because they are your husband's employees.

Question: My subcontractors are hiring subcontractors; do I need to check and hold their ICEC?

Answer: No, but for your protection it is highly recommended to have proof of their workers' comp insurance.

Question: I have been hired to cut grass for a commercial building. Do I need an ICEC?

Answer: No.

Question: I have also been hired by a general contractor to landscape new construction. Do I need an ICEC?

Answer: Only if the landscaping is a part of the contract for the construction of the building.

Question: What if my subcontractor's ICEC is revoked? How do I find out?

Answer: According to MN Rule 5202.0160, sub. 3, the DLI will serve the revocation letter to all contractors reported to the Department by the ICEC holder. The revocation is effective seven days after the day of receipt.

Question: I work for Habitat for Humanity.
Do I need an ICEC?

Answer: If you're **volunteering**
your services to Habitat or a
similar organization, you do not
need an ICEC. If you are being
paid, you need one.

Question: I'm a sole proprietor painter.
Do I need an ICEC?

Answer: If you work strictly for homeowners, you do not need an ICEC. If you work as a subcontractor for a general contractor, you will need an ICEC.

Question: If our MN company hires an Independent Contractor who lives in WI and is hired to work in IL, does he need an ICEC?

Answer: No. In this example the location of the work is the deciding factor. In you example the worker would be governed by the laws in the state where the work is performed.

Question: Why do we need more government regulation in the construction industry?

Answer: The ICEC program is intended to “level the playing field.” The goal is to make it easier to insure that all employees are properly covered for workers’ comp and unemployment insurance and have the proper taxes withheld to avoid problems with other state and federal agencies.

Questions?