

The frequently asked questions (FAQs) below answer questions often received by the Minnesota Department of Labor and Industry (DLI) related to worker misclassification and independent contractor status. The FAQs are intended as informational and guidance only and do not have the force or effect of law. DLI cannot provide legal advice or advisory opinions. Employers and workers may wish to consult with legal counsel. These FAQs are not a substitute for review of the applicable laws and rules and should not be considered comprehensive. To review Minnesota's misclassification laws, see Minnesota Statutes, sections [181.722](#) and [181.723](#).

Note: Minnesota Statutes, section [181.723, subd. 4](#) (independent contractor test) is effective for building construction or improvement services provided or performed on or after March 1, 2025. Before this date, the [previous version](#) of the independent contractor test is in effect.

General misclassification FAQs

1. What is worker misclassification?

Misclassification occurs when an employer classifies, represents or treats a worker who is an employee under Minnesota or federal law as an independent contractor.

2. What is the impact of worker misclassification?

Misclassifying employees as independent contractors is a problem because misclassified workers often do not receive minimum wage, overtime pay, earned sick and safe time, unemployment benefits, workers' compensation coverage, pregnancy and parental leave and other workplace protections that properly classified employees are entitled to under the law. In addition, employers who misclassify workers may avoid paying payroll taxes and other costs that employers operating lawfully must pay. By evading legally required costs employers who misclassify receive an unfair competitive advantage over law-abiding employers.

3. If an employer has misclassified a worker, is the employer liable for the underlying benefits and worker protections not provided to the misclassified worker?

Employers who misclassify workers may be liable for back wages and other benefits unlawfully withheld, including minimum wage, overtime pay and earned sick and safe time, as well as other compensatory damages the worker would have received had they been properly treated as an employee. Employers may additionally be liable for penalties, liquidated damages and other remedies. If an employer has misclassified a group of workers over an extended period, potential monetary liabilities may be significant.

4. What should an employer do to make sure they are properly classifying their workers?

Employers should evaluate each worker individually, consult state and federal independent contractor tests and seek advice from legal counsel as needed.

5. What is an independent contractor test?

State and federal laws and rules have established multi-factor or multi-element independent contractor tests to determine the employment relationship between a worker and an employer, meaning whether a worker is an employee or an independent contractor. These tests are present in state unemployment, tax, wage and hour and workers' compensation laws and rules. Multi-factor or multi-element independent contractor tests often ask a series of questions that guide employers on how to properly classify a worker. The independent contractor test for general misclassification in the wage and hour context is found in Minnesota Statutes, section [181.722, subd. 3](#) and the independent contractor test for misclassification in the residential and commercial construction context is found in Minnesota Statutes, section [181.723, subd. 4](#).

6. When I started my job, I was not asked to fill out an I-9, W-4 or any other tax form. Does that mean I'm an independent contractor?

While it is both standard practice and required under federal law for someone entering an employee-employer relationship to fill out certain federal forms, not being asked to fill them out does not make you a properly classified independent contractor. This practice may indicate the employer is classifying or treating you as an independent contractor; however, it does not necessarily mean that is the correct classification. An employer must consider and apply the applicable independent contractor tests to determine if a worker should be classified as an employee or an independent contractor.

7. If I received a 1099, does that mean I'm an independent contractor?

Receiving a 1099 likely means the employer is classifying or treating you as an independent contractor; however, this does not necessarily mean you are being correctly classified as an independent contractor instead of an employee under applicable independent contractor tests.

8. What activities related to worker misclassification violate Minnesota law?

The prohibited activities related to worker misclassification can be found at Minnesota Statutes, sections [181.722, subd. 1](#) and [181.723, subd. 7](#). The prohibited activities are:

- Failing to classify, represent or treat an employee as an employee in violation of any applicable law.
- Failing to report or disclose an employee as an employee to a government entity when required to do so by applicable law.
- Requiring or requesting that an employee enter into an agreement or complete any document that misclassifies, misrepresents or treats an employee as an independent contractor.

The prohibited activities above apply to all industries. The following additional prohibited activities apply specifically to the residential and commercial construction industry:

- Requiring an employee to register under Minnesota Statutes, [section 326B.701](#).
- Requiring an employee to do any of the following as a condition of payment:
 - register as a construction contractor under Minnesota Statutes, section [326B.701](#);
 - agree to being treated, represented or classified as an independent contractor; or
 - form a business entity.

9. What damages and penalties could an employer face if they violate the prohibited activities listed above?

Potential damages and penalties include:

- Compensatory damages to the employee the employer failed to classify, represent or treat as an employee including, but not limited to, minimum wage, overtime, shift differentials, vacation pay, sick pay, other forms of paid time off, health insurance, life and disability insurance, retirement plans, saving plans, employer contributions to unemployment insurance and Social Security and Medicare, as well as any costs and expenses incurred by the employee resulting from the misclassification.
- A penalty of up to \$10,000 for each violation of the prohibited activities.

Employers can also face the following penalties:

- A penalty of up to \$10,000 for each employee the employer fails to classify, represent or treat as an employee pursuant to Minnesota Statutes, sections [181.722](#) or [181.723](#).
- A penalty of \$1,000 per day for any person who delays, obstructs or otherwise fails to cooperate with DLI's investigation.

Residential and commercial construction worker misclassification FAQs

10. What does Minnesota Statutes, section [181.723, subd. 3](#) mean by “an individual who provides or performs building construction or improvement services for a person that are in the course of the person’s trade, business, profession or occupation is an employee of that person and that person is an employer of the individual?”

An individual is an employee if they are providing or performing services that are in the course of the hiring entity’s trade, business, profession or occupation, unless the individual meets the independent contractor test to establish independent contractor status under Minnesota Statutes, section [181.723, subd. 4](#). In other words, if you are hiring an individual to provide or perform services that are in the course of your trade, business, profession or occupation, the individual is your employee unless all the elements outlined in Minnesota Statutes, section [181.723, subd. 4](#) are satisfied.

11. According to Minnesota Statutes, section [181.723, subd. 4\(a\)](#), “[a]n individual is an independent contractor and not an employee of the person for whom the individual is providing or performing services in the course of the person’s trade, business, profession or occupation only if the individual is operating as a business entity that meets all of the statutory requirements at the time the services were provided or performed.” What is considered a business entity?

The law defines a business entity as a legal or commercial entity including, but not limited to, a sole proprietor, LLC, LLP, corporation, partnership, incorporated or unincorporated association or joint stock company, but does not include an individual. Individual is defined as a human being. In essence, the individual needs to be in business for themselves, meaning operating as an independent business entity, to qualify as an independent contractor. This is necessary in addition to meeting all of the elements in the independent contractor test under the law to be considered an independent contractor.

12. I want to hire someone to do some home repairs on my own home. Will they be considered my employee?

Generally, no, they will not be considered your employee. The independent contractor test in Minnesota Statutes, [section 181.723, subd. 4](#) only applies when you have engaged someone to provide or perform services that are in the course of your trade, business, profession or occupation.

13. What records is a contractor required to collect from a subcontractor to verify that the subcontractor is properly classified as an independent contractor? Is the contractor required to periodically check to ensure these records are current?

The law does not require contractors to collect any specific records to verify the statutory requirements of the independent contractor test at Minnesota Statutes, section [181.723, subd. 4](#) are met; however, record and other documentation verification is a best practice. The law does require that contractors retain all the information and documents they based any independent contractor determination on for at least three years and that this information be maintained in a manner where it can be readily produced to DLI upon demand. The extent to which a contractor chooses to require documents for verification of statutory requirements is a question of risk tolerance and may be informed by factors such as repeated business relationships. Contractors may consider checking publicly available information, such as the Secretary of State’s website or a portfolio of work contained on a subcontractor’s website. Contractors may also consider requesting representative proof of compliance with other requirements of the independent contractor test such as tax or insurance requirements.

14. On my job, materials are purchased on a tax-exempt basis and I'm the owner's "purchasing agent." Can I be considered an independent contractor on this project if I don't own the materials at any point?

The independent contractor test requires that an independent contractor owns, rents or leases equipment, tools, vehicles, materials, supplies, office space or other facilities that are used by the independent contractor's business entity to provide or perform building construction or improvement services. This requirement assesses the business entity generally and not at a specific project or contract level. No single item on this list, such as materials, is in and of itself determinative. The focus of this requirement is whether the business entity demonstrates sufficient investment to be able to independently move from job to job for different customers.

15. I'm a subcontractor and do all of my work for one general contractor for all of their projects. Can I be considered an independent contractor or do I have to work for more than one customer or contractor to be an independent contractor?

One requirement of the independent contractor test is that an independent contractor must provide, perform or offer to provide or perform services for multiple people or entities or the general public. Offering services to multiple people or the general public does not require a business entity to accept jobs they do not want or that they are unable to accommodate due to previous commitments. If you are free to accept jobs from other customers at your own discretion and are available for solicitation of such jobs, this requirement may be satisfied.

16. I'm a general contractor and my subcontractor told me they forgot to file their LLC renewal, resulting in their registration lapsing six months ago. Is my subcontractor now my employee?

All requirements of the independent contractor test, including holding a current business registration, must be satisfied at the time the subcontractor's services are provided or performed to be considered an independent contractor.

17. When assessing whether my subcontractor meets the independent contractor test, who should I contact if I can't figure out whether they have required licenses, registrations or certifications?

This information is generally available at <http://ims.dli.mn.gov/ims>. You can also contact DLI's Construction Codes and Licensing Division at 651-284-5074 (registration), dli.register@state.mn.us or 651-284-5069 (enforcement).

18. One of the independent contractor test requirements is that an independent contractor must operate under a written contract to provide or perform specific services. What must be included in the contract?

The written contract must:

- be signed and dated by both an authorized representative of the independent contractor and of the person for whom the services are being provided or performed;
- be fully executed no later than 30 days after the date work commences (this does not apply to change orders);
- identify the specific services to be provided or performed under the contract; and
- provide for compensation from the person for the services provided or performed under the contract on a commission or per-job or competitive bid basis and not on any other basis.

19. I am a general contractor who has master subcontract agreements with subcontractors and issues job-specific work orders for each job. Is that sufficient to satisfy that compensation under the written contract must be on a “per-job” basis?

Where the responsibilities and relationships on a project are governed by multiple documents, those documents may be examined together as part of the written contract to determine if the independent contractor test requirements are met. Job-specific work orders that result in actual payment on a per-job basis for specific services identified for that job may satisfy the test if, combined with other governing documents, all the test requirements are met.

20. Is “scope of work: carpentry as per plans and specs” a good enough description to satisfy that a written contract must identify the “specific services to be provided or performed?”

Where written contracts reference and incorporate other documents, such as plans and specifications, those documents may be examined together as part of the written contract to determine if the independent contractor requirements are satisfied.

21. I do not have a signed contract with my subcontractor. Are they now my employee?

The independent contractor test requires that a written contract be signed by an authorized representative of both parties and that it be fully executed no later than 30 days after the work commences (except for change orders) in order for a subcontractor to meet the requirements of the test.

22. My subcontractor gave me a ticket for work performed on a carbon paper booklet that said, “paint hall, total cost \$800 due now.” I wrote him a check based on that

ticket. Is that sufficient under the independent contractor test or do I need him to send me an invoice?

The independent contractor test requires that an independent contractor submit invoices and receive payments for the completion of specific services provided or performed in the name of its business entity. The test does not contain additional requirements about the form of invoices. If the specific services provided or performed are invoiced in the name of the business entity and payment is received in the name of the business entity, this requirement is met so long as payments are not made in cash.

23. The project owner's specifications require a very specific process for mixing mortar on my historic renovation project. Does following these specifications make me an employee?

Compliance with items like technical project specifications, plans and code requirements do not, on their own, make a subcontractor an employee. The independent contractor test requires that an independent contractor be responsible for the completion of the specific services in the written contract, as well as for failure to complete the specific services in the contract.

24. My subcontractor did not complete the work called for in the subcontract. Are they now an employee rather than an independent contractor?

A failure to complete work does not impact whether a subcontractor is considered an employee or an independent contractor. Rather, the independent contractor test requires that an independent contractor be responsible for completion or failure to complete the specific services in the written contract.

25. I want to use a cost-plus or time and materials contract with my subcontractor, under which they will not have any opportunity for "additional profit" or "loss." Does this make my subcontractor an employee?

Determination of whether a contract meets the requirements of the independent contractor test requires a case-by-case analysis. The test requires that under the contract the hired person may realize additional profit or suffer a loss if the costs and expenses to provide or perform the contracted services are less than or greater than the compensation provided under the contract. If this requirement is not met, the contract does not satisfy the independent contractor test. This requirement was also required under the previous independent contractor test for the residential and commercial construction industry.

26. I hired a subcontractor who I thought was an independent contractor, but it turns out they are classified as an employee. If I didn't know about it, am I individually liable?

An owner, partner, principal, member, officer or agent may be individually liable for knowingly or repeatedly engaging in the prohibited activities as described in question eight. The law defines “knowingly” as “knew or could have known with the exercise of reasonable diligence.”