

Independent contractor tests in the construction industry

The following information contains general information, subject to statutory change, and is not legal advice.

An individual providing or performing commercial or residential building construction or improvement services is an employee unless the individual meets **all** of the requirements listed in [Minnesota Statutes, section 181.723, subdivision 4](#). The statute was [amended in 2024](#), and the new independent contractor criteria are effective for commercial or residential building construction or improvement services provided or performed on or after March 1, 2025.

Nine-factor test – on or before Feb. 28, 2025

For commercial or residential building construction or improvement services provided or performed **on or before Feb. 28, 2025** – the individual is an independent contractor if they meet all the following requirements:

1. maintains a separate business with the individual's own office, equipment, materials, and other facilities;
2. (i) holds or has applied for a federal employer identification number or (ii) 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.

Fourteen-factor test – on or after March 1, 2025

For commercial or residential building construction or improvement services provided or performed on or after **March 1, 2025** – the individual is an independent contractor if they are operating as a business entity and meet all the following requirements:

1. was established and maintained separately from and independently of the person for whom the services were provided or performed;
2. owns, rents, or leases equipment, tools, vehicles, materials, supplies, office space, or other facilities that are used by the business entity to provide or perform building construction or improvement services;
3. provides or performs, or offers to provide or perform, the same or similar building construction or improvement services for multiple persons or the general public;
4. is in compliance with all of the following:
 - a. (i) holds a federal employer identification number if required by federal law;
 - b. (ii) holds a Minnesota tax identification number if required by Minnesota law;
 - c. (iii) has received and retained 1099 forms for income received for building construction or improvement services provided or performed, if required by Minnesota or federal law;
 - d. (iv) has filed business or self-employment income tax returns, including estimated tax filings, with the federal Internal Revenue Service and the Department of Revenue, as the business entity or as a self-employed individual reporting income earned, for providing or performing building construction or improvement services, if any, in the previous 12 months; and
 - e. (v) has completed and provided a W-9 federal income tax form to the person for whom the services were provided or performed if required by federal law;
5. is in good standing as defined by [section 5.26](#), if applicable;
6. has a Minnesota unemployment insurance account if required by [chapter 268](#);
7. has obtained required workers' compensation insurance coverage if required by [chapter 176](#);
8. holds current business licenses, registrations, and certifications if required by [chapter 326B](#) and [sections 327.31 to 327.36](#);
9. is operating under a written contract to provide or perform the specific services for the person that:
 - a. (i) is signed and dated by both an authorized representative of the business entity and of the person for whom the services are being provided or performed;
 - b. (ii) is fully executed no later than 30 days after the date work commences;
 - c. (iii) identifies the specific services to be provided or performed under the contract;
 - d. (iv) provides 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; and
 - e. (v) the requirements of item (ii) shall not apply to change orders;
10. submits invoices and receives payments for completion of the specific services provided or performed under the written proposal, contract, or change order in the name of the business entity. Payments made in cash do not meet this requirement;
11. the terms of the written proposal, contract, or change order provide the business entity control over the means of providing or performing the specific services, and the business entity in fact controls the provision or performance of the specific services;
12. incurs the main expenses and costs related to providing or performing the specific services under the written proposal, contract, or change order;
13. is responsible for the completion of the specific services to be provided or performed under the written proposal, contract, or change order and is responsible, as provided under the written proposal, contract, or change order, for failure to complete the specific services; and
14. may realize additional profit or suffer a loss, if costs and expenses to provide or perform the specific services under the written proposal, contract, or change order are less than or greater than the compensation provided under the written proposal, contract, or change order.