

Construction Contractor Registration Minnesota Statutes § 181.723 as amended (Minnesota Session Laws, chapter 295)

Frequently Asked Questions

Background: A law enacted in 2012 replaced the independent contractor exemption certificate (ICEC) program with a simplified two-year pilot project for registration of contractors who provide building construction and improvement services. It also establishes a framework, including the longstanding nine-factor test, within which individual construction workers may be determined to be employees or independent contractors. In 2014, the legislature made the registration program permanent.

Contractor registration is required as of Sept. 15, 2012. There is no cost to register. It is done online at <https://secure.doli.state.mn.us/license/initialapp.aspx?code=IR>. Registration information will be maintained on the Minnesota Department of Labor and Industry (DLI) website. Penalties may be assessed for failure to register, hiring unregistered contractors, misclassifying workers and coercing others to form a business entity. The penalty for failing to register will be forgiven if registration is achieved within 30 days, and the penalty for hiring an unregistered subcontractor is also forgiven, but for the first violation only.

What are “building construction or improvement services”?

The statute does not define what “building construction or improvement services” are, but it does specifically exclude certain services.

- Building construction and improvement services do not include the manufacture, supply or sale of products, materials or merchandise.
- Building construction services also do not include landscaping services for the maintenance or removal of existing plants, shrubs, trees and other vegetation, even if the services are provided as part of a contract for the building construction or improvement services. All other landscaping services are also excluded unless they are provided as part of the building construction or improvement contract.

If a service is not specifically excluded above, but there is a question about whether it is a building construction or improvement service, contractors may register. Contractors are encouraged to register if it is unclear whether a service is covered, but the service is provided as part of a building construction or improvement contract.

Is every contractor who performs building construction or improvement services required to register?

- Every construction contractor that performs building construction or improvement services on or after Sept. 15, 2012, is required to register with DLI, unless the contractor meets one of the exemptions described below. Examples of construction contractors who must comply with the law: individual independent contractors; businesses registered with the Secretary of State, such as limited liability companies, corporations and partnerships; and other types of business entities that perform building construction or improvement services.

Who is not required to register?

The following people are not required to register with DLI.

- A person who, at the time the person is performing the construction services, holds a current license, certificate or registration under chapter 299M or 326B, including:
 - electrical contractors, technology system contractors, elevator contractors, satellite system contractors, electricians, installers, linemen, elevator constructors, power limited technicians, satellite system installers, registered electrical employers, registered unlicensed elevator constructors and registered unlicensed individuals (electrician, maintenance electrician and power limited technician);
 - plumbing contractors, water conditioning contractors and installers, plumbers, medical gas installers, registered plumbing employers, registered plumbing apprentices, certified backflow prevention testers and registered unlicensed individuals (plumbing);
 - high-pressure-piping (HPP) business contractors, contracting and journeyman HPP pipefitters, registered apprentice pipefitters and registered unlicensed individual pipefitters;
 - residential building contractors, residential remodelers and residential roofers;
 - boiler and hobby boiler operators and engineers;
 - certificate of exemption – builders;
 - certificate of exemption – remodelers; and
 - certification of exemption – roofers.
- Fire protection system contractors and installers and potable water piping system contractors and installers, licensed or certified under Minnesota Statutes chapter 299M.
- A person who has been issued an ICEC that expires after Sept. 15, 2012. However, when the ICEC expires, the person must register with DLI before performing building construction services (unless a different exemption applies).
- A person who has given a bond to the state under section 326B.197 or 326B.46 for:
 - gas, heating, ventilation, cooling, air conditioning, fuel burning or refrigeration work (mechanical contractor bond); or
 - plumbing, sewer or water service installation, or subsurface sewage treatment work.
- An employee of the person performing the construction services, if the person was in compliance with laws related to employment of the individual at the time the construction services were performed.
- A person who is exempt from the residential building contractor license requirement because their gross receipts do not exceed \$15,000 under section 326B.805, subd. 6, clause (5) and holds a valid certificate exemption issued by DLI.
- An architect or professional engineer engaging in professional practice as defined in section 326.02, subd. 2 and 3.
- A school district or technical college governed under chapter 136F.
- A person providing construction services on a volunteer basis, including but not limited to Habitat for Humanity and Builders Outreach Foundation, and their individual volunteers when engaged in activities on their behalf.

Does registration replace other licensing laws?

No. If contractors are performing any construction work for which a license, certification or separate registration is required under Minnesota Statutes chapter 326B (i.e. boiler, electrical, elevator, HPP, plumbing or residential building contractor), they must apply for the applicable license instead of

submitting contractor registration. Residential, electrical, plumbing and high-pressure-piping contractors apply or renew a license on-Line at <https://secure.doli.state.mn.us/license/initialapp.aspx>. For more information, call DLI at (651) 284-5031 (personal licenses) or (651) 284-5034 (business licenses).

What information is required for registration?

The following information is entered online for registration:

- (1) the business's legal name and any assumed name filed with the Minnesota Secretary of State;
- (2) designated business address and physical address;
- (3) telephone number;
- (4) email address;
- (5) Minnesota tax identification number, if one is required or has been issued;
- (6) federal employer identification number, if one is required or has been issued;
- (7) evidence of the active status of the applicant's business filings with the secretary of state, if one is required or has been issued;
- (8) whether the applicant has any employees at the time the application is filed;
- (9) the names of all other persons with an ownership interest in the business entity and the percentage of the interest owned by each person, except that the names of shareholders with less than 10 percent ownership in a publicly traded corporation need not be provided;
- (10) information documenting compliance with workers' compensation;
- (11) information documenting compliance with unemployment insurance laws;
- (12) a certification that the person signing the application has reviewed it, determined the information provided is true and accurate, and determined the person signing is authorized to sign and file the application as an agent of the applicant; and
- (13) a signed authorization for DLI to verify the information provided.

An individual who is registering as an individual or sole proprietor, or who owns 25 percent or more of a contracting business, must also provide:

- (14) the individual's full legal name and title at applicant's business;
- (15) the individual's business address and telephone number;
- (16) the percentage of the applicant's business owned by the individual; and
- (17) the individual's Social Security Number.

Does registration need to be renewed?

- Yes. All current and new registrations are set to expire on June 30, 2015. Information on the registration renewal process will be sent to all registered contractors in the spring of 2015.
- However, a registered person must notify the commissioner within 15 days after there is a change in any of the information submitted with the registration. This notification can be done online. However, a new registration application must be filed if the contractor's business structure, legal form or ownership changes.

I am an independent contractor. What do I need to do?

Effective Sept. 15, 2012, independent contractors performing building construction or improvement services for another construction contractor must do the following.

- Meet the nine-factor independent contractor test described below.

- Register with DLI or meet one of the registration exemptions listed above. For example, independent contractors who hold an unexpired ICEC do not need to register until the ICEC expires. However, they must still meet the nine-factor test for every job.
- Comply with all applicable employment, tax, and workers' compensation and unemployment insurance laws if the independent contractor has employees.

What is the “nine-factor test”?

The nine-factor test has been used since 1996 to evaluate whether an individual is an independent contractor in the construction industry. Under this test, an independent contractor:

- (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.

I am an owner of a limited liability company (LLC) that provides building construction services for other construction contractors. How does this law apply to me?

The LLC must:

- maintain current contractor registration with the Department of Labor and Industry *and* LLC registration with the Secretary of State;
- enter into written contracts, submit invoices and receive payment in the name of the LLC;
- meet the nine-factor test; and
- comply with all applicable employment, tax, and workers' compensation and unemployment insurance laws for its employees.

I subcontract out some of my building construction work to individual independent contractors. What are my obligations?

The independent contractor must i) be registered with DLI *and* ii) meet the nine-factor independent contractor test. If both of these requirements are not met, the individual is considered to be your employee for purposes of workers' compensation, labor standards, OSHA and unemployment compensation. To avoid this, the contractor should do the following.

- Verify any business entity you subcontract construction work to is currently licensed or registered with DLI at <https://secure.doli.state.mn.us/lookup/licensing.aspx>. If there is no

record of DLI registration or licensure, determine whether an exemption from registration applies.

- Verify the independent contractor meets the nine-factor test for services performed for you. Enter into written contracts that are consistent with the nine-factor test.
- Verify whether the independent contractor might have employees and needs workers' compensation insurance. The workers' compensation insurance lookup is at www.inslookup.doli.state.mn.us. This is important because under Minnesota Statutes § 176.215, if a subcontractor's employee is injured, and the subcontractor does not have workers' compensation insurance, the general contractor (or an intermediate contractor) is liable for the workers' compensation benefits owed to the injured worker. For more information about the workers' compensation liability of contractors, see www.dli.mn.gov/CCLD/PDF/wc_liability.pdf.

I subcontract out some of my building construction work to other construction contractors who are business entities, such as a limited liability company (LLC). What are my obligations?

If an individual who performs building construction services for you (the general or hiring construction contractor) is an owner or partial owner of a business entity (such as an LLC), the individual is considered your employee for purposes of workers' compensation, labor standards, OSHA and unemployment compensation unless certain requirements are met. To avoid this, the contractors should.

- Verify the LLC (or other type of business entity) is currently licensed or registered with DLI at <https://secure.doli.state.mn.us/lookup/licensing.aspx>. If there is no record of DLI registration or licensure, determine whether an exemption from registration applies.
- Verify each LLC has an active business filing with the Secretary of State at <http://mbportal.sos.state.mn.us>.
- Enter into written contracts for the construction services with each LLC that are consistent with the nine-factor test.
- Obtain invoices from and pay the LLC, not the individual owner(s) of the business.
- Verify the LLC can meet the nine-factor test (particularly if an owner of the business entity is performing the construction services for you).
- Verify the LLC has workers' compensation insurance or is not required to have coverage. The workers' compensation insurance lookup is at www.inslookup.doli.state.mn.us. This is important, because under Minnesota Statutes § 176.215, if a subcontractor's employee is injured and the subcontractor does not have workers' compensation insurance, the general contractor (or an intermediate contractor) is liable for the workers' compensation benefits owed to the injured worker. For more information about the workers' compensation liability of contractors, see www.dli.mn.gov/CCLD/PDF/wc_liability.pdf.

Anything else construction contractors should be aware of?

Enforcement action, including penalties, can be taken against a construction contractor who:

- requires an individual through coercion, misrepresentation or fraudulent means to adopt independent contractor status or form a business entity;
- knowingly misrepresents or misclassifies an individual as an independent contractor;
- contracts with or performs construction services for another person without first being registered if required by subdivision 4a; or
- contracts with or pays another person to perform construction services if the other person is not registered or exempt from registration (though the penalty is forgiven for the first

violation).

- All payments to an unregistered person for construction services on a single project site are considered a single violation.
- It is not a violation for a person to contract with or pay an unregistered person if the unregistered person was registered at the time the contract for construction services was entered into; or for a homeowner or a business that is not a construction business to contract with or pay an unregistered person.

Do you have a checklist for construction contractors?

- Yes, see www.dli.mn.gov/CCLD/PDF/registration_checklist.pdf.

I still have questions. Who can I contact?

- Call the Department of Labor and Industry at (651) 284-5074.
- Email DLI at dli.register@state.mn.us.
- Contact a private attorney for advice about your particular circumstances.

Note: *The information in this document does not constitute legal advice. It is merely intended to provide an overview of the topic. It is not a substitute for the advice of an attorney. The specific provisions of law or an attorney should be consulted to determine applicability to any particular situation. The Department of Labor and Industry has tried to provide accurate and useful information, but it makes no representation and accepts no liability for any reliance on the completeness or accuracy of this information. The amendments to Minnesota Statutes § 181.723 are in Minnesota Laws 2012, Chapter 295, Article 2 at www.revisor.mn.gov/laws/?id=295&doctype=Chapter&year=2012&type=0#laws.2.1.0.*