

Is Your Subcontractor Really an Employee?

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You may be an employer with requirements — and not know it!

Not understanding your requirements can leave your business vulnerable to unwanted penalties and even lawsuits.

In some cases, a self-proclaimed "independent contractor" is actually a worker for whom you must:

- **Pay workers' compensation.**
- **Meet wage and hour requirements.**
- **Pay unemployment tax.**
- **Always keep a safe workplace.**

**Safety Note:
Did you know?**

If it's your job site, you are responsible for the on-site safety of all employees, whether they work for you, your contractor, a subcontractor or someone else. Go to [Steps to a Safe Workplace](#).

To help protect you and your business, we've created this quick and easy questionnaire to help you determine if your contractor is really an employee:

Ask yourself just three questions — It's as easy as 1-2-3!

Question 1: [Are you hiring someone for more than personal labor?](#)

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Question 1: Are you hiring someone for more than personal labor?

Are they bringing employees?

If you are hiring someone who is bringing his/her own employees to perform the work, and you are not supervising this work (see Question 2), then that person is not your employee.

Note: Your subcontractor is responsible for his/her own employees. Make sure he/she is registered as an employer with L&I and is current with workers' comp premiums. If not, you will be held responsible for unpaid premiums. For more information, refer to [Avoid Liability for Your Subcontractor's Unpaid Workers' Comp Premiums](#). (L&I publication F262-262-000)

OR

Are they bringing heavy equipment?

If you are hiring someone who brings more than "ordinary hand tools" to the job and you are not supervising the work (see Question 2), then he/she is not your employee. Examples of heavy equipment include earth-moving equipment, such as a backhoe or bulldozer, an on-site rain gutter manufacturing machine, a metal lathe, a feller-buncher or a skidder.

Did you answer "yes" to even ONE of the above questions?

Then they are a contractor, and usually you will have:

- No workers' compensation premiums due.
- No wage and hour requirements.
- No unemployment tax.

Did you answer "no" to BOTH?

[Go on to Question 2: Are you supervising them?](#)

[Go back to the previous question.](#)

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Question 2: Are you supervising them?

You may be hiring someone who brings employees or heavy equipment to the job, but they still can be your employee.

The key test is whether or not you are supervising

Laws addressing the idea of supervision talk about having "direction and control" over the worker or having control of the "means and methods" of the work.

- **You ARE NOT supervising** if you are only scheduling and inspecting the work.
- **You ARE supervising** if you are telling your worker or a subcontractor's workers how to do the job, assigning tasks, training, keeping time sheets, paying a wage or setting regular hours.
- **Having a UBI number or a contractor's registration with L&I is NOT enough proof** that your workers are unsupervised, independent contractors. If you are supervising, they are your employees.

Did you answer "yes" to Question 2?

Then they are your employee, and you must do the following:

- [Pay workers' compensation for them.](#)
- [Meet wage and hour requirements.](#)
- [Pay unemployment tax for them.](#)

[Remember: Always keep a safe workplace!](#)

Did you answer "no" to Question 2?

[Go on to Question 3: Do they have an established business of their own?](#)

[Go back to the previous question.](#)

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Question 3: Do they have an established business of their own?

Take the "Six-Part Test" below

A "yes" answer to all six questions usually means the worker has a business of his/her own, and you are not responsible for workers' comp premiums, unemployment tax or wage and hour requirements.

- Supervision**
Do they perform the work free of your direction and control? ([See Question 2.](#))
- Business office**
Do they maintain and pay for a place of business that is separate from yours?
– A cell phone and a truck is not enough. You need to visit his or her place of business and make sure.
- Previously established business**
Do they have an established, independent business that existed before you hired them?
Evidence may include other customers or advertising.
- IRS taxes**
When you entered into the contract, was the contractor responsible for filing a business tax return with the IRS for his or her business?
- Maintains books**
Do they maintain a set of books dedicated to the expenses and earnings of the business?
You can ask to review them for your protection.
- Required registrations**
 - **Are they up to date on all required registrations and accounts?**
 - **UBI number?** Check [Washington State Department of Revenue tax registration account](#). [Click Online!](#)
 - **Contractor registration number** ([RCW 18.27](#)), **electrical contractor license** ([RCW 19.28.061](#)) or **elevator contractor license** ([RCW 70.87.240](#))? Check L&I's [Look Up: Contractors or Tradespeople](#) application. [Click Online!](#)
 - **If they have employees, do they also have these required accounts?**
 - **Unemployment insurance account** with Washington State Employment Security Department? Call 360-902-9360. [Click Online!](#)
 - **Workers' Compensation account** with Washington State Department of Labor & Industries? Check at [Verify Workers' Comp Premium Status](#). [Click Online!](#)

Note: If you plan to treat your worker/subcontractor as an independent, make sure you can prove it. You may always ask the person you are hiring to see the above documents.

Did you answer "yes" to ALL SIX questions on this page?

Then they are a contractor, and usually you will have:

- **No workers' compensation premiums due.**
- **No wage and hour requirements.**
- **No unemployment tax.**

Did you answer "no" to ANY of the six questions on this page?

You usually DO have to do the following for the worker(s) you are hiring, since they are NOT independent contractors.

- **Pay workers' compensation.**
- **Meet wage and hour requirements.**
- **Pay unemployment tax.**
- **Always keep a safe workplace!**