

## FACT Sheet



MINNESOTA DEPARTMENT OF  
**LABOR & INDUSTRY**  
CONSTRUCTION CODES AND LICENSING

## Who may work as an independent contractor in the construction industry?

### Exemption certificate

A new state law effective Jan. 1, 2009, requires individuals (not corporations, LLCs or partnerships) who work as independent contractors in the building construction industry to obtain from the Department of Labor and Industry an Independent Contractor Exemption Certificate (ICEC). As of Jan. 1, 2009, for purposes of the state's workers compensation, unemployment insurance, wage and hour, and occupational safety and health laws, individuals doing building construction work without an ICEC will be employees of the contractor for whom they are working.

To obtain an ICEC, individuals must complete and submit an application that establishes they meet the conditions required to operate as an independent contractor. To operate as independent contractors, individuals must be able to meet the conditions set out in the new law's nine-factor test.

An ICEC permits individuals to work as independent contractors. Certificate holders, however, may work as either independent contractors or as employees. Whether a certificate holder is working as an employee or an independent contractor will depend on the conditions of the particular work relationship. To be an independent contractor, in addition to having an ICEC, the conditions of the work relationship must also meet the nine-factor test.

View the nine-factor test at [www.doli.state.mn.us/ic](http://www.doli.state.mn.us/ic).

### Apply for a certificate

Beginning in September 2008, the DLI will have ICEC applications available on its Web site at [www.doli.state.mn.us/ic](http://www.doli.state.mn.us/ic). The application and the renewal fee for the certificate is \$150. Independent contractors will be required to renew their exemption certificate every two years.

### Contractor responsibility

Contractors will be obligated to verify that the workers with whom they enter into agreements as independent contractors have a current exemption certificate. Contractors are required to maintain a copy of these certificates for five years. The DLI will maintain a list of certificate holders on its Web site, and certificates for those individuals will be available for download.

Individuals and contractors who fail to comply with the law are subject to a penalty of up to \$5,000 for each violation and will be reported to workers' compensation, unemployment insurance and revenue regulation for further action.

**For more information  
about the ICEC, visit  
[www.doli.state.mn.us/ic](http://www.doli.state.mn.us/ic)**

*This fact sheet is a general outline, subject to statutory change. To read the text of the law, visit [www.doli.state.mn.us/ic](http://www.doli.state.mn.us/ic). Determination of independent contractor status for those doing commercial or residential building construction or improvements in the public or private sector is governed by Minnesota Statutes §181.723.*

## Contractor responsibility

After Jan. 1, 2009, contractors are obligated to verify that the workers with whom they enter into agreements as independent contractors have a current ICEC. For purposes of the state's workers' compensation, unemployment insurance, wage and hour and occupational safety and health laws, workers without current exemption certificates will be employees of the contractors for whom they are working, unless another exemption applies to them.

The DLI will maintain a list of certificate holders on its Web site. Once issued, the ICEC will be available for download at [www.doli.state.mn.us/ic](http://www.doli.state.mn.us/ic). Contractors can access the site to verify a worker's status and will be required to maintain a copy of the certificates for five years.

## Penalties

Individuals and contractors who fail to comply with the law are subject to a penalty of up to \$5,000 for each violation and will be reported to other state agencies for possible further action.

## Contact information

For exemption certificate application materials, to verify an employee's status as an independent contractor and a list of frequently asked questions visit

[www.doli.state.mn.us/ic](http://www.doli.state.mn.us/ic)

To contact the DLI for more information about the exemption certificate:

- e-mail: [dli.ic@state.mn.us](mailto:dli.ic@state.mn.us)
- phone: (651) 284-5074
- fax: (651) 284-5749

## Additional resources for independent contractors:

Minnesota Department of Labor and Industry  
Workers' Compensation Division  
Web site: [www.doli.state.mn.us/indpcont](http://www.doli.state.mn.us/indpcont)  
Phone: 1-800-342-5354

Minnesota Department of Employment  
and Economic Development  
Unemployment Insurance Division  
Web site:  
[www.uimn.org/tax/hdbook/ind\\_contractor.htm](http://www.uimn.org/tax/hdbook/ind_contractor.htm)

Minnesota Department of Revenue  
Web site: [www.taxes.state.mn.us](http://www.taxes.state.mn.us)  
Phone: (651) 282-9999

US Internal Revenue Service  
Web site: [www.irs.gov](http://www.irs.gov)  
Phone: 1-800-829-1040

This document can be provided in different forms, such as large print, Braille or audiotape, by calling (651) 284-5005 or (651) 297-4198/TTY.

This brochure is also available in the following languages:

- Spanish (Español)
- Hmong (Hmoob)
- Russian (Russkiy yazyk)



Minnesota Department of Labor and Industry  
443 Lafayette Road N.  
St. Paul, MN 55155  
[www.doli.state.mn.us](http://www.doli.state.mn.us)



# INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE

Follow this guide to help  
assess your eligibility for  
the Independent Contractor  
Exemption Certificate.

[WWW.DOLI.STATE.MN.US/IC](http://WWW.DOLI.STATE.MN.US/IC)

## A statewide requirement

Beginning Jan. 1, 2009, to work as an independent contractor in public or private commercial or residential building construction, an individual must have a current Independent Contractor Exemption Certificate (ICEC) issued by the Minnesota Department of Labor and Industry (DLI). This new requirement applies only to individuals, not corporations, partnerships or LLCs.

An ICEC permits an individual to work as an independent contractor. A certificate holder, however, may work as either an independent contractor or as an employee. Whether a certificate holder is working as an employee or an independent contractor will depend on the conditions of the particular work relationship. To work as an independent contractor, in addition to having an ICEC, the conditions of the work relationship must meet the nine-factor test.

## Apply for a certificate

Applications for the ICEC will be available at [www.doli.state.mn.us/ic](http://www.doli.state.mn.us/ic) beginning Sept. 1, 2008.

The application and renewal fee for the ICEC is \$150. Applications may be submitted by mail or fax and will be granted or denied within 30 days after they are received by the DLI. The ICEC must be renewed every two years.

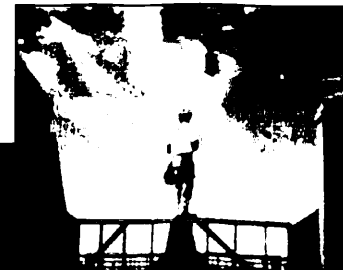
## Nine-factor test: Are you an independent contractor?

To be an independent contractor, in addition to having an ICEC, an individual must meet the conditions set out in all of the following factors.

- maintains a separate business with the individual's own office, equipment, materials and other facilities;
- 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 person has performed services in the previous year for which the individual is seeking the ICEC;
- operates under contracts to perform specific services for specific amounts of money and under which the individual controls the means of performing the services;
- incurs the main expenses related to the service the individual performs under contract;
- is responsible for the satisfactory completion of services that the individual contracts to perform and is liable for failure to complete the service;
- receives compensation for service performed under a contract on a commission or per-job or competitive bid basis and not on any other basis;
- may realize a profit or suffer a loss under contract to perform service;
- has continuing or recurring business liabilities or obligations; and
- the success or failure of the individual's business depends on the relationship of the business receipts to expenditures.

To determine eligibility for an ICEC, individuals will be required to submit as part of their application, information and documentation showing they meet the above nine factors.

The Independent Contractor Exemption Certificate application will be available beginning Sept. 1, 2008, at [www.doli.state.mn.us/ic](http://www.doli.state.mn.us/ic).



## Independent Contractor Exemption Certificate (ICEC)

A new state law effective Jan. 1, 2009, requires individuals (not corporations, LLCs or partnerships) who work as independent contractors in the building construction industry to obtain from the Department of Labor and Industry an Independent Contractor Exemption Certificate (ICEC). As of Jan. 1, 2009, for purposes of the state's workers' compensation, unemployment insurance, wage and hour, and occupational safety and health laws, individuals doing building construction work without an ICEC will be employees of the contractor for whom they are working.



To obtain an ICEC, individuals must complete and submit an application that establishes they meet the conditions required to operate as an independent contractor. To operate as independent contractors, individuals must be able to meet the conditions set out in the law's nine-factor test.

An ICEC permits individuals to work as independent contractors. Certificate holders, however, may work as either independent contractors or as employees. Whether a certificate holder is working as an employee or an independent contractor will depend on the conditions of the particular work relationship. To be an independent contractor, in addition to having an ICEC, the conditions of the work relationship must also meet the nine-factor test.

For details about the Independent Contractor Exemption Certificate program and requirements, view the following fact sheet and brochure (PDFs) or visit the FAQ page.

<a href="#">Fact Sheet</a>	<a href="#">Español</a>	<a href="#">Hmoob</a>	<a href="#">Russkiy</a>
<a href="#">Brochure</a>	<a href="#">Español</a>	<a href="#">Hmoob</a>	<a href="#">Russkiy</a>

The application for the ICEC will be available on this site, and will be accepted by DLI, beginning Sept. 2, 2008. Applications may be hand delivered or submitted by mail or fax. Complete applications will be granted or denied within 30 days after DLI receives them.

### Enforcement

Contractors who employ individuals who do not have an ICEC will face civil penalties if they do not provide workers' compensation and unemployment insurance to these individuals, and do not properly withhold state and federal taxes from their employees' pay.

DLI is responsible for the administration and enforcement of the ICEC program, and is required to share information with the Minnesota Departments of Revenue and Employment and Economic Development regarding individuals and employers who are found to be in violation of the ICEC requirements. In addition to penalties for failure to provide workers' compensation and unemployment insurance, employers may also be subject to civil penalties of up to \$5,000 per violation for violating provisions of the ICEC laws and rules. Individuals may also be subject to civil penalties if they provide false or misleading information in an ICEC application, fail to meet all requirements of the nine-factor test to qualify as an independent contractor, allow another person to use their ICEC, misrepresent their status as an independent contractor, or alter or falsify an ICEC.